

SENATE BILL No. 5

By Senators Faust-Goudeau and Ware

1-8

1 AN ACT enacting the Kansas reinvestment act.

2

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through 11, and amendments thereto, may be
5 cited as the Kansas reinvestment act. The purpose of this act is to promote
6 job creation and economic development in impoverished areas of this state
7 and to promote the growth of communities in such areas by providing
8 financial assistance to small businesses and community organizations.

9 Sec. 2. As used in this act:

10 (a) "Business renovation" means improving the existing physical
11 facilities or physical structure of an "eligible business or organization."

12 (b) "Eligible business or organization" means a "small business,"
13 "new small business," "exempt business," "nonprofit organization," or
14 "religious organization" that meets the applicable requirements for
15 eligibility for an award of a loan under this act as determined by the
16 secretary.

17 (c) "Exempt business" means a business exempted from certain
18 requirements for eligibility for a loan under this act by the secretary
19 pursuant to the provisions of section 8, and amendments thereto.

20 (d) "Fraudulent activity" means submitting false documentation to the
21 state of Kansas, the secretary or the secretary's designee or a third party
22 contractor approved by the secretary for purposes of securing a loan
23 pursuant to this act, including, but not limited to: (1) Overestimating goods
24 or services for the intended purpose of receiving funds; or (2) using
25 awarded funds for purposes or in a manner contrary to the provisions of
26 this act.

27 (e) "Impoverished area" means a zip code area in which the median
28 income does not exceed 70% of the state median income according to
29 United States census bureau data for the most recent year available.

30 (f) "New small business" means a small business that has been in
31 existence for more than 12 months and less than 18 months.

32 (g) "Nonprofit organization" means any organization:

33 (1) Organized and operated for the purpose of the relief of poverty,
34 distress or other condition of public concern within this state, financially
35 supporting the activities of an organization organized and operated for
36 such purposes or conferring direct benefits on the community at large;

1 (2) where no part of the net earnings of such organization inures to
2 the benefit of any private shareholder or individual member of such
3 organization; and

4 (3) that is either exempt from the payment of federal income taxes as
5 provided by sections 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6) or 501(c)
6 (7) of the federal internal revenue code of 1986, as amended, or is found
7 by the secretary to be organized and operated as a bona fide nonprofit
8 organization.

9 (h) "Program manager" means the manager of the Kansas
10 reinvestment act program appointed by the secretary of commerce.

11 (i) "Religious organization" means any corporation, trust or
12 organization:

13 (1) Incorporated or established for religious purposes, or established
14 for charitable, hospital or educational purposes and engaged in effectuating
15 one or more of such purposes;

16 (2) affiliated with, operated by or supervised or controlled by a
17 corporation, trust or organization incorporated or established for religious
18 purposes; and

19 (3) which has been exempted from the payment of federal income
20 taxes pursuant to section 501(c)(3) or 501(d) of the federal internal
21 revenue code of 1986, as amended.

22 (j) "Secretary" means the secretary of commerce or the designee of
23 the secretary of commerce.

24 (k) "Small business" means a sole proprietorship, limited liability
25 corporation, partnership or corporation that receives less than \$3,500,000
26 in gross revenue annually and employs 50 or fewer employees and is not a
27 franchisee of a national business that has franchisees in more than one
28 state.

29 Sec. 3. (a) There is hereby established the Kansas reinvestment
30 program, which shall be within the department of commerce. The secretary
31 of commerce may appoint a program manager to administer the Kansas
32 reinvestment program who shall be in the unclassified service. The
33 program manager's salary shall be equivalent to the salary of a division
34 head within the department of commerce.

35 (b) The secretary may contract with third parties, as otherwise
36 provided by law, to carry out the provisions of this act. Subject to
37 appropriation acts, the secretary may hire staff members who shall be in
38 the unclassified service.

39 (c) The secretary shall have authority to enter into agreements for
40 awarding loans to eligible businesses or organizations for the purposes of,
41 and in accordance with, the provisions of this act beginning on July 1,
42 2019, and ending on June 30, 2023.

43 Sec. 4. (a) There is hereby created in the state treasury the Kansas

1 reinvestment act fund. The secretary shall administer the fund. All
2 expenditures from the fund shall be for administration of this act and for
3 the purpose of promoting job creation and economic development by
4 awarding financial assistance to eligible businesses or organizations in
5 accordance with the provisions of this act. All expenditures shall be made
6 in accordance with appropriation acts upon warrants of the director of
7 accounts and reports issued pursuant to vouchers approved by the
8 secretary or the secretary's designee.

9 (b) Subject to appropriation acts, beginning on July 1, 2019, and on
10 each following July 1 up to and including July 1, 2022, the director of
11 accounts and reports shall transfer \$1,250,000 from the general fund to the
12 Kansas reinvestment fund.

13 (c) Subject to appropriation acts, up to 10% of the amount transferred
14 to the Kansas investment fund each fiscal year may be used by the
15 secretary for the administration of the Kansas reinvestment program,
16 including for salaries of the program manager and any staff.

17 Sec. 5. (a) On and after July 1, 2019, a business or organization may
18 apply to the secretary to enter into an agreement for a loan, pursuant to this
19 act. The application shall be submitted on a form and in a manner
20 prescribed by the secretary and shall include the information requested by
21 the secretary.

22 (b) Upon receipt of an application, if the secretary finds that the
23 applicant is an eligible business or organization meeting the requirements
24 of this act, the secretary shall enter into an agreement with the eligible
25 business or organization for a loan in the amount and upon terms and
26 conditions at the secretary's discretion within the limitations and
27 provisions of this act. When considering an application or terms of an
28 agreement, the secretary shall consult with the local governmental
29 authorities responsible for economic development in the city or county
30 within which the applicant is located.

31 (c) An agreement with the eligible business or organization shall
32 provide that should the eligible business or organization fail to comply
33 with the terms set forth in the agreement, the secretary may terminate the
34 agreement, and any outstanding funds awarded, with interest, shall
35 constitute a debt immediately due and payable to the state of Kansas and
36 shall be repaid to the secretary for deposit in the Kansas reinvestment act
37 fund. The outstanding amount of the funds awarded, with interest, and the
38 cost of recovery may be turned over for collection to a designated
39 collection agency by the secretary. All agreements shall require that the
40 applicant furnish the secretary with information requested by the secretary
41 for the purposes of fulfilling the goals and ensuring compliance with the
42 provisions of this act. An award recipient shall make its books and records
43 available for inspection by the secretary or the secretary's designee at any

1 time during business hours.

2 (d) Loans to eligible businesses or organizations awarded by the
3 secretary shall be used for the following purposes, to be specified in the
4 agreement between the secretary and the award recipient:

5 (1) Business renovation;

6 (2) business equipment, including machinery, office equipment or
7 software;

8 (3) a new structure or structures;

9 (4) up to \$10,000 for relocation to an impoverished area; or

10 (5) up to \$20,000 for marketing.

11 (e) All agreements shall further specify that loan funds awarded by
12 the secretary shall not be used for:

13 (1) Salaries of employees;

14 (2) personal vehicles or vehicles that will be used for less than 90%
15 business use; or

16 (3) payments for debts incurred for goods or services received prior
17 to receipt of the loan.

18 (f) All agreements shall provide that fraudulent activity by the loan
19 recipient shall constitute a breach of the agreement and result in the
20 mandatory return of the full amount of awarded loan funds to the secretary.
21 All agreements shall contain terms prohibiting the sale of a business that
22 has received a loan for a period of five years from the date the loan is
23 awarded, unless the loan is paid back by the business prior to or as a
24 requirement of the sale.

25 (g) Loans shall include the following terms, which shall be specified
26 in the agreement between the secretary and the loan recipient:

27 (1) A fixed interest rate of 1.99%;

28 (2) a term of repayment set by agreement between the recipient and
29 the secretary;

30 (3) a six-month grace period during which interest shall accrue but no
31 payments shall be due; and

32 (4) a provision for forgiveness of the remaining principal and interest
33 upon payment of 50% of the principal, if the applicable provisions of this
34 act and terms of the agreement with the secretary have been met, loan
35 payments to the secretary have been timely made and applicable business
36 goals or other conditions in furtherance of the purposes of this act set forth
37 in the agreement between the secretary and the award recipient have been
38 achieved.

39 (h) The secretary shall set conditions under which loan payments may
40 be suspended for a period of time or the loan may be restructured where
41 circumstances beyond the control of the loan recipient have resulted or
42 will result in financial hardship, and the secretary finds such suspension or
43 restructuring will permit the loan recipient to successfully meet the goals

1 of this act. Suspension of payments or restructuring of the loan under such
2 circumstances shall not be considered a failure to meet conditions for
3 eligibility for forgiveness of principal pursuant to subsection (g)(4).

4 Sec. 6. (a) In addition to other requirements under this act, to be
5 eligible to receive an award of a loan, a small business or new small
6 business shall meet the following requirements, which shall be set forth in
7 the agreement with the secretary:

8 (1) Be located in or relocating to an impoverished area;

9 (2) not be delinquent in filing any return or paying any tax due to the
10 state of Kansas or the federal government; and

11 (3) submit to the secretary a business plan that has been reviewed and
12 deemed to substantially meet applicable commercial lending standards by:

13 (A) The Kansas small business development center or the federal
14 small business administration; and

15 (B) a bank or other financial institution approved by the secretary.

16 (b) In addition to other requirements under this act, to be eligible to
17 receive an award of a loan, a nonprofit organization or religious
18 organization shall meet the following requirements, which shall be set
19 forth in the agreement with the secretary and a loan recipient:

20 (1) Be located in or relocating to an impoverished area;

21 (2) be current in required filings and in good standing with the federal
22 internal revenue service;

23 (3) be in good standing with regard to any filings due to the state of
24 Kansas;

25 (4) employ no more than 25 employees and annually receive gross
26 revenues of no more than \$750,000; and

27 (5) agree to employ at least two new employees.

28 Sec. 7. Loans awarded by the secretary shall be subject to the
29 following limitations:

30 (a) No religious organization or nonprofit business shall receive
31 awards totaling more than \$75,000;

32 (b) no small business shall receive awards totaling more than
33 \$100,000; and

34 (c) no new small business shall receive awards totaling more than
35 \$50,000.

36 Sec. 8. (a) A nonprofit organization or religious organization that does
37 not meet the eligibility requirements set forth in section 6(b)(4), and
38 amendments thereto, or a business that does not meet the definition of a
39 small business or new small business as defined in section 1, and
40 amendments thereto, may apply to the secretary for an exemption from
41 one or more of those requirements. If the secretary grants an exemption,
42 the secretary may also waive the requirements of section 6(a)(3), and
43 amendments thereto. No exemption shall be considered by the secretary

1 with regard to the business activity restrictions set forth in section 9, and
2 amendments thereto.

3 (b) An application for an exemption shall be considered by the
4 secretary, and approval or disapproval at the secretary's sole discretion
5 shall be given within 30 days of submission of a completed application. In
6 reviewing the application, the secretary shall consider:

7 (1) The direct economic impact on the impoverished area by the
8 applicant, including, but not limited to, an analysis of the near-term and
9 five-year projected economic impact from job creations and capital
10 investment by the business;

11 (2) the commitment by the applicant to the community of the
12 impoverished area as demonstrated by the total investment in the business,
13 employment commitments, and intent to remain in the community; and

14 (3) information provided by local government authorities responsible
15 for economic development in the impoverished area regarding the impact
16 of an award, including, the submission of a letter of support from the local
17 government authorities.

18 (c) If the secretary approves the application for an exemption
19 pursuant to subsection (a), a loan or loans shall be granted to the applicant
20 as otherwise provided by this act, except that the total of all awards to the
21 applicant shall not exceed \$75,000, and the secretary may require terms
22 more favorable to the state than those set forth in section 5(g)(1), and
23 amendments thereto, and need not provide a grace period or loan
24 forgiveness provision pursuant to section 5(g)(3) or (4), and amendments
25 thereto.

26 Sec. 9. Notwithstanding any other provision of this act, applicants
27 that engage in any of the following business activities shall not be eligible
28 for loans:

29 (a) Nude or semi-nude dancing;

30 (b) pornography;

31 (c) sales of alcoholic liquor at retail, as defined in K.S.A. 41-102, and
32 amendments thereto;

33 (d) sales of cigarettes, pipe tobacco or pipes;

34 (e) loans utilizing title to vehicles as collateral; and

35 (f) check cashing.

36 Sec. 10. The secretary may adopt rules and regulations as necessary
37 to carry out the provisions of this act.

38 Sec. 11. The provisions of sections 1 through 11, and amendments
39 thereto, shall expire on July 1, 2023.

40 Sec. 12. This act shall take effect and be in force from and after its
41 publication in the statute book.