

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 582

(Senator Hettleman)

Judicial Proceedings

Commercial Tenants – Personal Liability Clauses – Enforceability

This emergency bill establishes that a personal liability clause included in a commercial lease is unenforceable if the following conditions are met: (1) as a result of the Governor’s declarations issued March 5, 2020, or other proclamations issued related to the COVID-19 outbreak, the tenant was required to *either* cease serving food or beverages for on-premises consumption *or* close to the public because of its status as a nonessential business or a specific provision contained in an executive order or proclamation; and (2) the default causing the individual to become wholly or partially personally liable occurred between March 23, 2020, and September 30, 2020, inclusive. These provisions remain in effect through September 30, 2023, after which time they are abrogated with no further action required by the General Assembly.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Select Definitions

“Commercial lease” means a lease for building floor space, including any addenda or modifications to the lease, intended to be used by the tenant for a nonresidential use

whether or not the lease expressly sets forth a use. “Personal liability clause” means a clause or provision in a commercial lease or an associated agreement that requires an individual who is not a commercial tenant under the commercial lease to become personally liable to the commercial landlord, in whole or in part, for fees or charges, including rent, taxes, utility fees, or fees for routine building maintenance, owed by the commercial tenant in the event of a default.

Prohibited Personal Liability Clause

A commercial landlord is prohibited from attempting to enforce a personal liability clause that the landlord knows or reasonably should know is rendered unenforceable under the bill. The bill authorizes the court to enter a judgment against a commercial landlord for reasonable attorney’s fees and court costs for a violation of this restriction. A commercial landlord’s lawful action for nonpayment of rent, lawful termination of a tenancy established by a commercial lease, lawful refusal to renew or extend a commercial lease or associated agreement, or lawful reentry and repossession of the covered property may not be construed as a violation of the bill’s provisions.

Small Business Effect: Small businesses that operate as landlords may be adversely affected by the bill due to the restrictions on enforcing personal liability clauses against individuals under specified circumstances. Other small business owners may benefit from not being subject to personal liability under the circumstances in the bill.

Additional Comments: On March 5, 2020, Governor Lawrence J. Hogan, Jr., declared a state of emergency and catastrophic health emergency in an effort to control and prevent the spread of COVID-19. The state of emergency was most recently renewed on January 21, 2021.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 719 (Delegate Moon) - Judiciary.

Information Source(s): Prince George’s County; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2021
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