

Chapter 25

(House Bill 719 of the 2021 Regular Session)

AN ACT concerning

Commercial Tenants – Personal Liability Clauses – Enforceability

FOR the purpose of providing that a certain personal liability clause in a commercial lease or associated document ~~is~~ ~~may be~~ is unenforceable under certain circumstances; prohibiting a commercial landlord from attempting to enforce a personal liability clause that the commercial landlord knows or reasonably should know is unenforceable under this Act; authorizing a court to enter a certain judgment; providing that certain lawful action by a commercial landlord may not be construed as a violation of certain provisions of this Act; providing that the period of the declared state of emergency and catastrophic health emergency may not be used for the purposes of calculating the time limitation on filing a certain action; defining certain terms; making this Act an emergency measure; providing for the termination of this Act; and generally relating to the enforcement of certain provisions in commercial leases and associated documents.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That:

- (a) (1) In this section the following words have the meanings indicated.
 - (2) “Commercial landlord” means a landlord under a commercial lease.
 - (3) “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.
 - (4) “Commercial tenant” means a tenant under a commercial lease.
 - (5) “COVID–19” means, interchangeably and collectively, the coronavirus known as COVID–19 or 2019–nCoV and the SARS–CoV–2 virus.
 - (6) “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.
- (b) A personal liability clause ~~shall~~ ~~may~~ shall be unenforceable during the period of the state of emergency and catastrophic health emergency beginning March 5, 2020, with the Governor’s “Declaration of State of Emergency and Existence of Catastrophic Health

Emergency – COVID–19” and ending 180 days after the expiration or rescission of the Governor’s proclamation if:

(1) as a result of the issuance by the Governor on March 5, 2020, of the proclamation declaring a state of emergency and the existence of a catastrophic health emergency or any other proclamation issued under Title 14 of the Public Safety Article relating to the outbreak of COVID–19, the commercial tenant was required to:

(i) cease serving patrons food or beverage for on–premises consumption; or

(ii) close to the public due to its status as a nonessential business or a specific provision contained in an executive order or proclamation issued by the Governor; and ~~and~~

(2) the default causing the individual to become wholly or partially personally liable for such obligation occurred between March 23, 2020, and September 30, 2020, inclusive; and.

~~(3) the court finds, based on the totality of the circumstances, that enforcement of the personal liability clause would be unjust.~~

(c) (1) (i) A commercial landlord may not attempt to enforce a personal liability clause that the commercial landlord knows or reasonably should know is unenforceable under this section.

(ii) A court may enter a judgment against a commercial landlord for reasonable attorney’s fees and court costs for a violation of subparagraph (i) of this paragraph.

(2) 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 this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That the period of the state of emergency and catastrophic health emergency beginning March 5, 2020, with the Governor’s “Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID–19” and ending on the expiration or rescission of the Governor’s proclamation may not be considered for the purposes of calculating time limitations restricting the filing of an action alleging liability that accrued during the state of emergency and catastrophic health emergency under a personal liability clause of a commercial lease.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three–fifths of all the members elected to

each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. It shall remain effective ~~through September 30, 2023, and, at the end of September 30, 2023~~ until 180 days after the expiration or rescission of the Governor's proclamation of March 5, 2020, "Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19", and 180 days after the expiration or rescission of the Governor's proclamation, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Gubernatorial Veto Override, December 6, 2021.