

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1220 (Delegate Conaway)
Environment and Transportation

Commercial Leases - Force Majeure Clauses - Required

This bill requires a commercial lease to contain a force majeure clause that allocates the risk of loss if performance under a lease is hindered, delayed, or prevented due to a “force majeure event.” The bill only applies prospectively and may not be applied to or interpreted to have any effect on or application to any commercial lease or commercial lease renewal executed before the bill’s effective date.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “force majeure event” means an event that the parties could not have anticipated or controlled.

A lease executed for commercial property in the State must include a force majeure clause that (1) identifies the force majeure events covered by the clause and the duties of the lessor or the lessee that may be excused if breached; (2) requires and defines a causal connection between these elements; and (3) outlines the scope of relief a lessor or a lessee is entitled to if the lessor’s or the lessee’s performance is excused.

A force majeure clause included in a lease under the bill must include the following force majeure events:

- the proclamation of a state of emergency under Title 14, Subtitle 3 of the Public Safety Article; and
- the proclamation of a catastrophic health emergency under Title 14, Subtitle 3A of the Public Safety Article.

Current Law: Statute does not require force majeure clauses to be included in leases.

In response to the COVID pandemic, the General Assembly enacted numerous pieces of legislation to alleviate potential harms caused by the unprecedented disruption. For example, Chapter 25 of the 2021 special session was an emergency bill that temporarily established (in uncodified language) that a “personal liability clause” included in a commercial lease was unenforceable during the period of the state of emergency and catastrophic health emergency beginning March 5, 2020, and ending 180 days after the expiration or rescission of the Governor’s proclamation if (1) as a result of the Governor’s proclamation 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.

The Act defined a “personal liability clause” as 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.

Small Business Effect: The bill’s requirement to include force majeure clauses may meaningfully impact small businesses by ensuring that liability under a commercial lease agreement during force majeure events is clearly defined (to the extent such an event occurs). However, the bill does not govern the content of such clauses.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 5, 2023
km/jkb

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