



The Senate of Maryland
ANNAPOLIS, MARYLAND 21401

TESTIMONY OF SENATOR SHELLY HETTLEMAN
SB 582 – COMMERCIAL TENANTS – PERSONAL LIABILITY CLAUSES – ENFORCEABILITY

Many small businesses across the country are suffering because of COVID-19 and we're all aware of businesspeople in Maryland who are struggling because of the restrictions that have been placed on them, through the Governor's Executive Orders (as well as County Executives' and the Mayor's orders) as part of an effort to control the virus. Restaurants and bars and nonessential services were forced to be shuttered for quite some time, first statewide, and more recently subject to the restrictions of each particular jurisdiction. Businesses have lost millions of dollars, many have been forced to close, and many are behind in rent and owe substantially for a variety of financial liabilities.

It is pretty standard business practice for commercial leases to have personal guarantees in them, enabling a landlord to pursue the personal assets of the borrower if there's an inability to pay. I believe, in the midst of a pandemic, when through no fault of their own, a business is forced to close and there's a forced loss of ability to pay, that government should step in to provide assistance and to help manage that process. This bill is one such way to approach that.

The bill says that for a set period of time – from March 23, 2020 to September 30, 2020 – a personal liability clause is unenforceable, if as a result of the Governor declaring a state of emergency on March 5th, the commercial tenant was required to: 1) cease serving patrons food or beverage for on-premises consumption or 2) close to the public due to its status as a nonessential business.

It doesn't say that the tenant isn't responsible for the debt and it doesn't say that the landlord cannot go after the debt in another way – through repossession or late fees, or any variety of actions – but it does say that the personal liability clause is unenforceable.

This bill is based on [action that was taken in New York](#) in response to the COVID-restrictions on business there, and the city council enacted a bill quite similar to this one. The bill was challenged in court and [was upheld](#) in November.

We believe it is narrowly drawn and is good public policy to help our small business community during these very challenging times.