

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 582

(Senator Hettleman)

Judicial Proceedings

Rules and Executive Nominations

Commercial Tenants – Personal Liability Clauses – Enforceability

This emergency bill establishes circumstances under which a personal liability clause included in a commercial lease is unenforceable during the period of the state of emergency and catastrophic health emergency beginning March 5, 2020, as specified, and ending 180 days after the expiration or rescission of the Governor’s proclamation. Specifically, a personal liability clause 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.

The bill also establishes that the period during the declared state of emergency and catastrophic health emergency beginning March 5, 2020, and ending on the expiration or rescission of the 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.

Small Business Effect: Small businesses that operate as landlords may be adversely affected by the bill to the extent that the provisions regarding the enforcement of personal liability clauses against individuals under specified circumstances restrict or delay recovery that may have otherwise been available. 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 May 12, 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
rh/jkb Third Reader - May 19, 2021
Revised - Amendment(s) - May 19, 2021
Revised - Updated Information - May 19, 2021

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