AN ACT to amend the real property law, in relation to prohibiting the enforcement of certain personal liability provisions in commercial leases or rental agreements involving a COVID-19 impacted tenant and considering threatening to or attempting to enforce such a provision to be a form of harassment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new section 238-b to read as follows:

§ 238-b. Personal liability provisions in commercial leases; harassment.

1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "commercial tenant" means a person or entity lawfully occupying a covered property pursuant to a lease or other rental agreement.

(b) "covered property" means any building or portion of a building:

(i) that is lawfully used for buying, selling or otherwise providing goods or services, or for other lawful business, commercial, professional services or manufacturing activities; and (ii) for which a certificate of occupancy authorizing residential use of such building or such portion of a building has not been issued.

(c) "COVID-19" means the 2019 novel coronavirus or 2019-nCoV.

(d) "COVID-19 period" means March seventh, two thousand twenty through the later of: (i) the end of the first month that commences after the expiration of the moratorium on enforcement of evictions of residential and commercial tenants set forth in executive order number 202.8, as issued by the governor on March twentieth, two thousand twenty and thereafter extended; (ii) the end of the first month that commences after the expiration of the moratorium on certain residential evictions set forth in section 4024 of the coronavirus aid, relief, and economic security, or CARES act and any subsequent amendments to such section; or (iii) September thirtieth, two thousand twenty.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [−] is old law to be omitted.
(e) "COVID-19 state disaster emergency" means the state disaster emergency declared by the governor in executive order number two hundred two issued on March seventh, two thousand twenty.

(f) "impacted by COVID-19" means:

(i) with respect to an individual, that the individual experienced one or more of the following situations:

(A) the individual was diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(B) a member of the individual’s household was diagnosed with COVID-19;

(C) the individual was providing care for a family member or a member of the individual’s household who was diagnosed with COVID-19;

(D) a member of the individual’s household for whom the person had primary caregiving responsibility was unable to attend school or another facility that was closed as a direct result of the COVID-19 state disaster emergency and such school or facility care was required for the person to work;

(E) the individual was unable to reach their place of business because of a quarantine imposed as a direct result of the COVID-19 state disaster emergency;

(F) the individual was unable to reach their place of business because the person had been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(G) the individual became a major source of income or major support for a household because the head of the household died as a direct result of COVID-19; or

(H) the individual’s business closed as a direct result of the COVID-19 state disaster emergency.

(ii) with respect to a business, that:

(A) the business was subject to seating, occupancy or on-premises service limitations pursuant to an executive order issued by the governor or mayor during the COVID-19 period; or

(B) the revenues of the business during any three-month period within the COVID-19 period were less than fifty percent of its revenues for the same period in two thousand nineteen or less than fifty percent of its aggregate revenues for the months of December two thousand nineteen, January two thousand twenty, and February two thousand twenty.

(g) "landlord" means an owner of covered property or such owner’s agent.

(h) "personal liability provision" means, with respect to a commercial lease or other rental agreement involving real property and to which a business is a party as tenant, a term that provides for an individual to become wholly or partially personally liable for an obligation of such business arising under such lease or agreement upon the occurrence of a default or other event.

2. Personal liability provisions. No personal liability provision of a commercial lease or other rental agreement involving real property and to which a business impacted by COVID-19 is a party as tenant shall be enforced against an individual where the default or other event allowing for such enforcement occurs during the COVID-19 period.

3. Commercial tenant harassment. (a) A landlord shall not engage in commercial tenant harassment. Commercial tenant harassment shall be any act or omission by or on behalf of a landlord that: (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property; and (ii) includes
threatening to or implementing a personal liability provision that is not enforceable pursuant to this section.

(b) A landlord's lawful termination of a tenancy, lawful refusal to renew or extend a lease or other rental agreement, or lawful reentry and repossession of the covered property shall not constitute commercial tenant harassment for purposes of this subdivision.

4. Private right of action. (a) A commercial tenant may bring an action in any court of competent jurisdiction for a claim of commercial tenant harassment. If a court of competent jurisdiction finds that a landlord has engaged in commercial tenant harassment in relation to such commercial tenant, the court shall impose a civil penalty in an amount not less than ten thousand dollars and not more than fifty thousand dollars for each covered property in which such commercial tenant has been the subject of commercial tenant harassment and may further:

(i) issue an order restraining the landlord from engaging in commercial tenant harassment and directing the landlord to ensure that no further violation occurs; and/or

(ii) award such other relief as the court deems appropriate, including but not limited to injunctive relief, equitable relief, compensatory damages, punitive damages and reasonable attorneys' fees and court costs.

(b) The commercial tenant shall not be relieved of the obligation to pay any rent for which the commercial tenant is otherwise liable. Any monetary remedy awarded to a commercial tenant pursuant to this subdivision shall be reduced by any amount of delinquent rent or other sum for which a court finds such commercial tenant is liable to the landlord.

(c) This section does not limit or abrogate any claim or cause of action a person has under common law or by statute. The provisions of this section are in addition to any such common law and statutory remedies.

(d) Nothing contained in this section shall be construed as creating any cause of action for a commercial tenant's invitee.

§ 2. This act shall take effect immediately.