

STATE OF NEW YORK

10457

IN ASSEMBLY

May 18, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Carroll) --
read once and referred to the Committee on Judiciary

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:

1 Section 1. The real property law is amended by adding a new section
2 238-b to read as follows:

3 § 238-b. Personal liability provisions in commercial leases; harass-
4 ment.

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

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

9 (b) "covered property" means any building or portion of a building:
10 (i) that is lawfully used for buying, selling or otherwise providing
11 goods or services, or for other lawful business, commercial, profes-
12 sional services or manufacturing activities; and (ii) for which a
13 certificate of occupancy authorizing residential use of such building or
14 such portion of a building has not been issued.

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

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

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (e) "COVID-19 state disaster emergency" means the state disaster emer-
2 gency declared by the governor in executive order number two hundred two
3 issued on March seventh, two thousand twenty.

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

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

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

9 (B) a member of the individual's household was diagnosed with COVID-
10 19;

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

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

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

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

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

27 (H) the individual's business closed as a direct result of the COVID-
28 19 state disaster emergency.

29 (ii) with respect to a business, that:

30 (A) the business was subject to seating, occupancy or on-premises
31 service limitations pursuant to an executive order issued by the gover-
32 nor or mayor during the COVID-19 period; or

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

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

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

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

51 3. Commercial tenant harassment. (a) A landlord shall not engage in
52 commercial tenant harassment. Commercial tenant harassment shall be any
53 act or omission by or on behalf of a landlord that: (i) would reasonably
54 cause a commercial tenant to vacate covered property, or to surrender or
55 waive any rights under a lease or other rental agreement or under appli-
56 cable law in relation to such covered property; and (ii) includes

1 threatening to or implementing a personal liability provision that is
2 not enforceable pursuant to this section.

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

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

15 (i) issue an order restraining the landlord from engaging in commer-
16 cial tenant harassment and directing the landlord to ensure that no
17 further violation occurs; and/or

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

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

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

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

33 § 2. This act shall take effect immediately.