

AMENDED IN SENATE MAY 29, 2020  
AMENDED IN SENATE MAY 13, 2020  
AMENDED IN SENATE MARCH 25, 2020  
AMENDED IN SENATE MARCH 12, 2020

**SENATE BILL**

**No. 939**

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**Introduced by Senators Wiener and Lena Gonzalez** (Principal  
coauthors: Assembly Members Bonta, Chiu, and Ting)  
(Coauthor: Assembly Member Kalra)

February 6, 2020

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An act to add Section 1951.9 ~~to~~ *to, and to add and repeal Section 1951.10 of*, the Civil Code, relating to evictions, and declaring the urgency thereof, to take effect immediately.

**legislative counsel's digest**

SB 939, as amended, Wiener. Emergencies: COVID-19: commercial tenancies: evictions.

Existing law permits the Governor to proclaim a state of emergency during conditions of disaster or of extreme peril to the safety of persons and property, including epidemics. Existing law provides that the proclamation takes effect immediately, affords specified powers to the Governor, and terminates upon further proclamation by the Governor. Existing law prohibits the eviction of residential tenants during the pendency of a state of emergency, except as specified.

~~This bill would prohibit a person, business, or other entity from evicting tenants of commercial real property, including businesses and nonprofit organizations, and from taking specified other actions relating to the eviction of tenants of commercial real property, during the pendency of the state of emergency proclaimed by the Governor on~~

March 4, 2020, related to COVID-19. The bill would make an eviction in violation of those provisions void, against public policy, and unenforceable, and would make harassment or mistreatment of or retaliation against a tenant punishable by a fine not to exceed \$2,000 for each violation. The bill would make it an act of unfair competition and an unfair business practice to violate the foregoing prohibition. The bill would require written notice of protections afforded by the bill to be provided to commercial property tenants within 30 days of the effective date of the bill. The bill would render void and unenforceable evictions that occurred after the proclamation of the state of emergency but before the effective date of this bill. The bill would not prohibit the continuation of evictions that lawfully began prior to the proclamation of the state of emergency, and would not preempt local ordinances prohibiting or imposing more severe penalties for the same conduct.

The bill would also authorize a commercial tenant that is a small business or is an eating or drinking establishment, place of entertainment, or performance venue that meets specified financial criteria, including experiencing a specified decline in revenue after a shelter in place order took effect, to engage in negotiations with its landlord to modify rent or other economic requirements. The bill, with exceptions, would specify the notice and other requirements for engaging in negotiations to modify the lease, including that the tenant affirm, under the penalty of perjury, that the tenant meets the required financial criteria. By creating a new crime, the bill would impose a state-mandated local program. The bill would also authorize a tenant to terminate the lease, as provided. The bill would exclude publicly traded companies and affiliated companies from those provisions. The bill would make those provisions inoperative on December 31, 2021, or 2 months after the declared state of emergency ends, whichever is later.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

*This bill would prohibit a commercial landlord, as defined, from serving a specified notice of eviction on a commercial tenant, as defined, until 90 days after the state of emergency proclaimed by the Governor on March 4, 2020, is lifted and if specified criteria apply, including*

that the commercial tenant served a written notice on the landlord affirming, under the penalty of perjury, that the commercial tenant is an eligible COVID-19 impacted commercial tenant. By creating a new crime with regard to the notice being signed under the penalty of perjury, the bill would impose a state-mandated local program. The bill would define an “eligible COVID-19 impacted commercial tenant” for the purposes of these provisions as a commercial tenant, operating primarily in California, that occupies commercial real property pursuant to a lease and that meets certain financially related criteria. The bill would provide that specified notices of eviction served on commercial tenants are void under specified circumstances, including that the commercial tenant was an eligible COVID-19 impacted commercial tenant at the time the notice of eviction was served. The bill, among other things, would also provide a means for stopping an eviction in process, prohibit nonpayment of rent during the state of emergency from being grounds for an unlawful detainer action, as provided, limit when late fees can be imposed on a commercial tenancy, and require the landlord to provide written notice of the protections afforded by these provisions. The bill would prohibit the landlord from willfully harassing, intimidating, threatening, or retaliating against a commercial tenant with the intent to terminate the occupancy, and would subject the landlord to various damages if found by a court to have engaged in that behavior. The bill would also make a willful violation of these provisions an unlawful business practice and an act of unfair competition, subject to specified remedies and penalties.

This bill would authorize an eligible COVID-19 impacted commercial tenant, defined for the purposes of these provisions as a small business that operates primarily in California and is an eating or drinking establishment, place of entertainment, or performance venue that occupies commercial real property pursuant to a lease and that meets specified financially related criteria, to engage in good faith negotiations with its landlord in order to modify any rent or economic requirements. The bill would authorize an eligible COVID-19 impacted commercial tenant (eligible tenant) to serve written notice on the landlord, affirming under the penalty of perjury, that the commercial tenant is an eligible tenant and stating what lease modifications the commercial tenant is seeking. By creating a new crime with regard to the notice being signed under the penalty of perjury, the bill would impose a state-mandated local program. The bill would also provide that if the eligible tenant and the landlord do not reach a mutually satisfactory agreement within

a certain timeframe, the eligible tenant is authorized to terminate the lease, as provided. The bill would exclude publicly traded companies and affiliated companies from these provisions. The bill would make these provisions inoperative on December 31, 2021, or 2 months after the declared state of emergency ends, whichever is later.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1951.9 is added to the Civil Code, to read:  
2 1951.9. (a) The following definitions apply for the purposes  
3 of this section:

4 (1) "Commercial landlord" means any person, business, or  
5 other entity that owns or manages commercial property, or their  
6 agent.

7 (2) "Commercial real property" means all real property in this  
8 state except dwelling units made subject to this chapter,  
9 "mobilehomes" as defined in Section 798.3, and "recreational  
10 vehicles" as defined in Section 799.29.

11 (3) "Commercial tenancy" means the occupation of commercial  
12 real property pursuant to a lease.

13 (4) "Commercial tenant" means a tenant occupying commercial  
14 real property pursuant to a lease, including, but not limited to,  
15 businesses or nonprofit organizations.

16 (5) "Eligible COVID-19 impacted commercial tenant" means  
17 a commercial tenant that operates primarily in California, that  
18 occupies commercial real property pursuant to a lease, and that  
19 meets one of the following criteria:

20 (A) It is a commercial tenant that has experienced a decline of  
21 20 percent or more in average monthly revenue over the two most

**Commented [MH1]:** Note: This is all a simple summary of the bill for quick reference and is not what would become law.

Language that would become law begins on Page 4, "SECTION 1."

Note: The previous language was fully deleted and replaced with updated language – so you will not see a typical looking redline (track-changes).

Note: The core components of the bill remain substantively the same as the previous version,

**Commented [MH2]:** Section 1 defines commercial leases as every lease in the state that does not pertain to a dwelling unit or mobilehome.

All leasees are included in the bill.

1 recent calendar months when compared to one or both of the  
2 following:

3 (i) Its average monthly revenue for the two calendar months  
4 before a state or local government shelter-in-place order took  
5 effect.

6 (ii) Its average monthly revenue for the same calendar months  
7 in 2019.

8 (B) It is a commercial tenant that was prevented from opening  
9 or required to delay opening its business because of the state of  
10 emergency.

11 (C) It is a commercial tenant that has suffered a decline of 15  
12 percent or more in capacity due to compliance with an official  
13 public health order or occupational health and safety guideline  
14 for preventing the spread of the coronavirus (COVID-19).

15 (6) "State of emergency" means the state of emergency  
16 proclaimed by the Governor on March 4, 2020, related to the  
17 coronavirus (COVID-19).

18 (b) Until 90 days after the state of emergency is lifted, it shall  
19 be unlawful for a commercial landlord to serve a commercial  
20 tenant with a notice pursuant to paragraph (2) of Section 1161 of  
21 the Code of Civil Procedure if both of the following apply:

22 (1) The notice requires payment of rent that accrued during the  
23 state of emergency.

24 (2) The commercial tenant has served written notice on the  
25 premises' landlord affirming, under the penalty of perjury, that  
26 the commercial tenant is an eligible COVID-19 impacted  
27 commercial tenant as defined by this section.

28 (c) Until 90 days after the state of emergency is lifted, it shall  
29 be unlawful for a commercial landlord to serve a commercial  
30 tenant with a notice pursuant to paragraph (3) of Section 1161 of  
31 the Code of Civil Procedure if both of the following apply:

32 (1) The notice requires replenishment of a security deposit that  
33 the landlord has applied to an outstanding balance corresponding  
34 to unpaid rent that accrued during the state of emergency.

35 (2) The commercial tenant has served written notice on the  
36 premises' landlord affirming, under the penalty of perjury, that  
37 the commercial tenant is an eligible COVID-19 impacted  
38 commercial tenant as defined by this section.

39 (d) Subdivisions (b) and (c) shall apply prospectively.

**Commented [MH3]:**

Who is eligible for rent deferral?

Any lesee that was "prevented from opening," or even just delayed from opening.

Any lesee that government requirements reduce capacity by 15% or more.

Any lesee that has seen a 20% decline in revenue.

Language tries to exclude companies that operate in other states; excluding some national companies, chains, and franchisees, but not others.

**Commented [MH4]:**

This section applies retroactively back to March 4, 2020.

In effect for 3 months after the State of Emergency is lifted.

1 (e) A notice served by a commercial landlord to a commercial  
2 tenant pursuant to paragraph (2) of Section 1161 of the Code of  
3 Civil Procedure is void if both of the following apply:

4 (1) The notice requires payment of rent that accrued during the  
5 state of emergency.

6 (2) At the time the notice was served, the commercial tenant  
7 was an eligible COVID-19 impacted commercial tenant as defined  
8 by this section.

9 (f) A notice served by a commercial landlord to a commercial  
10 tenant pursuant to paragraph (3) of Section 1161 of the Code of  
11 Civil Procedure is void if both of the following apply:

12 (1) The notice requires replenishment of a security deposit that  
13 the landlord has applied to an outstanding balance corresponding  
14 to unpaid rent that accrued during the state of emergency.

15 (2) At the time the notice was served, the commercial tenant  
16 was an eligible COVID-19 impacted commercial tenant as defined  
17 by this section.

18 (g) Subdivisions (e) and (f) shall apply retroactively.

19 (h) In any action for unlawful detainer in which a judgment for  
20 possession has been entered in favor of a commercial landlord,  
21 the commercial tenant may move to have that judgment set aside  
22 on the basis of this section. A writ of possession shall not issue  
23 while the motion to set aside is pending. If a writ of possession  
24 was issued prior to filing of the motion to set aside, the court shall  
25 stay execution of the writ while the motion to set aside the judgment  
26 is pending.

27 (i) The failure of an eligible COVID-19 impacted commercial  
28 tenant to pay rent that accrues during the state of emergency shall  
29 not be grounds for an unlawful detainer action. The unpaid balance  
30 of any rent that accrued on the commercial tenancy of an eligible  
31 COVID-19 impacted commercial tenant during the state of  
32 emergency shall be due at the end of the month containing the date  
33 12 months after the end of the state of emergency, unless the tenant  
34 has reached an agreement with the person, business, or other entity  
35 to pay off the balance at a later time.

36 (j) Notwithstanding any lease provision to the contrary, late  
37 fees shall not be imposed for rent that accrued on the commercial  
38 tenancy of an eligible COVID-19 impacted commercial tenant  
39 during the state of emergency unless that rent remains unpaid after  
40 it becomes due pursuant to the terms of subdivision (i).

**Commented [MH5]:**

Mandates ONE FULL YEAR after the emergency order expires to pay rent.

Example: If the order goes until January 1, 2021

Rent deferral = 13 months

Does not need to be paid until Jan 1, 2021.

A property owner would have 25 months of non-payment of over a year's worth of revenue.

1 (k) Notwithstanding Section 1479, a landlord shall apply any  
2 rental payment made by an eligible COVID-19 impacted  
3 commercial tenant after the state of emergency is lifted toward the  
4 current month's rent before applying any residuals to any unpaid  
5 balance corresponding to rent that came due during the period of  
6 the state of emergency.

7 (l) Written notice of protections afforded by this section shall  
8 be provided to tenants of commercial real property within 30 days  
9 of the effective date of this section. If the commercial landlord  
10 customarily communicates with the commercial tenant in a  
11 language other than English, the commercial landlord shall  
12 provide the written notice required by this section in that other  
13 language.

14 (m) This section does not preempt any local ordinance  
15 prohibiting the same or similar conduct or imposing a more severe  
16 penalty for the same conduct prohibited by this section.

17 (n) In addition to the prohibitions contained in subdivisions (a)  
18 and (b) of Section 798.3, a commercial landlord shall not willfully  
19 harass, intimidate, threaten, or retaliate against a commercial  
20 tenant with the intent to terminate the occupancy. Any commercial  
21 landlord who violates this section shall be liable to the commercial  
22 tenant in a civil action for all of the following:

23 (1) Actual damages of the tenant.

24 (2) An amount not to exceed two thousand dollars (\$2,000) for  
25 each incident constituting a violation. In determining the amount  
26 of the award, the court shall consider proof of those matters as  
27 justice may require; however, in no event shall less than two  
28 hundred fifty dollars (\$250) be awarded for each separate cause  
29 of action. Subsequent or repeated violations, which are not  
30 committed contemporaneously with the initial violation, shall be  
31 treated as separate causes of action and shall be subject to a  
32 separate award of damages.

33 (o) In any action under subdivision (n), the court shall award  
34 reasonable attorney's fees to a prevailing commercial tenant. In  
35 any action the commercial tenant may seek appropriate injunctive  
36 relief to prevent continuing or further violation of the provisions  
37 of this section during the pendency of the action.

38 (p) Willful violation of this section shall constitute an unlawful  
39 business practice and an act of unfair competition within the  
40 meaning of Section 17200 of the Business and Professions Code.

**Commented [MH6]:**

Requires every lessor to proactively notify every one of their  
leasees withing 30 days.

This is unreasonable and would costs millions of dollars.

**Commented [MH7]:**

Allows a patchwork of local ordinances to continue.

**Commented [MH8]:**

Is simply asking for rent now "willful harassment"?

**Commented [MH9]:**

Headhunter provision for conducting a standard business  
function.

**Commented [MH10]:**

Tenant legal fees are taken care of.

1 The remedies and penalties provided by this section are cumulative  
2 to each other, the remedies under Chapter 5 (commencing with  
3 Section 17200) of Part 2 of Division 7 of the Business and  
4 Professions Code, and the remedies or penalties available under  
5 all other laws of this state.

6 (q) The remedies set forth in this section are not exclusive and  
7 shall not preclude the tenant from pursuing any other remedy that  
8 the tenant may have under any other law.

9 SEC. 2. Section 1951.10 is added to the Civil Code, to read:  
10 1951.10. (a) For purposes of this section, the following  
11 definitions apply:

12 (1) "Commercial real property" means all real property in this  
13 state except dwelling units made subject to this chapter,  
14 "mobilehomes" as defined in Section 798.3, and "recreational  
15 vehicles" as defined in Section 799.29.

16 (2) "Eligible COVID-19 impacted commercial tenant" means  
17 a small business that operates primarily in California, that  
18 occupies commercial real property pursuant to lease, and that  
19 meets one of the following criteria:

20 (A) It is an eating or drinking establishment, a place of  
21 entertainment, or a performance venue that has experienced a  
22 decline of 40 percent or more of average monthly revenue over  
23 the two most recent calendar months when compared to one or  
24 both of the following:

25 (i) Its average monthly revenue for the two calendar months  
26 before a state or local government shelter-in-place order took  
27 effect.

28 (ii) Its average monthly revenue for the same calendar months  
29 in 2019.

30 (B) It is an eating or drinking establishment, a place of  
31 entertainment, or a performance venue that was prevented from  
32 opening or required to delay opening its business because of the  
33 state of emergency.

34 (C) It is an eating or drinking establishment, a place of  
35 entertainment, or a performance venue that has suffered a decline  
36 of 25 percent or more in capacity due to compliance with an official  
37 public health order or occupational health and safety guideline  
38 for preventing the spread of the coronavirus (COVID-19).

39 (3) "Small business" means a business that is not dominant in  
40 its field of operation, the principal office of which is located in

**Commented [MH11]:**

Makes a standard business function, notification of being out of contract, AN UNLAWFUL BUSINESS PRACTICE.

**Commented [MH12]:**

Above and beyond all the legal protections already afforded in the bill, encourages further lawsuits.

PROVIDES NO PROTECTION TO PROPERTY OWNERS FOR BUSINESS RENTERS ABUSING THIS LAW.

**Commented [MH13]:**

Sec. 2 Includes all leases outside of dwelling units, same as Sec. 1.

**Commented [MH14]:**

Applies to all Eating / Drinking / Entertainment / Performance venues.

- All restaurants
- All bars
- All strip clubs
- All "entertainment" venues

That was prevented from opening or even delayed in opening.

Or has a 25% reduction in capacity due to government mandated social distancing requirements.



1 California, the officers of which are domiciled in California, and  
2 which has 500 or fewer employees.

3 (4) "State of emergency" means the state of emergency  
4 proclaimed by the Governor on March 4, 2020, related to the  
5 coronavirus (COVID-19).

6 (b) An eligible COVID-19 impacted commercial tenant who  
7 wishes to modify its commercial lease may engage in good faith  
8 negotiations with its landlord to modify any rent or economic  
9 requirement regardless of the term remaining on the lease.

10 (c) A commercial tenant that is an eligible COVID-19 impacted  
11 commercial tenant may serve written notice on the premises'  
12 landlord affirming, under the penalty of perjury, that the  
13 commercial tenant is an eligible COVID-19 impacted commercial  
14 tenant as defined by this section and stating the lease modifications  
15 the commercial tenant desires to obtain.

16 (d) If the eligible COVID-19 impacted commercial tenant and  
17 the landlord do not reach a mutually satisfactory agreement within  
18 30 days of the date the landlord received the negotiation notice,  
19 then within 10 days thereafter, the eligible COVID-19 impacted  
20 commercial tenant may terminate the lease by serving a notice of  
21 termination of the lease on the landlord. The tenant shall have 14  
22 days from service of the notice to vacate the premises. Once the  
23 eligible COVID-19 impacted commercial tenant vacates the  
24 property, all of the following shall apply:

25 (1) The lease shall terminate.

26 (2) No further liability for any rent, fees, or costs shall accrue  
27 under the lease.

28 (3) Any third-party guaranties associated with the lease shall  
29 terminate and shall no longer be enforceable.

30 (4) In lieu of any other damages, the eligible COVID-19  
31 impacted commercial tenant shall be obligated, within 12 months  
32 of vacating the commercial real property, to pay the landlord all  
33 of the following:

34 (A) Three months' worth of the past due rent incurred during  
35 the state of emergency or a lesser sum as may be actually unpaid.

36 (B) All unpaid rent that accrued outside of the state of  
37 emergency.

38 (e) The notices in subdivisions (c) and (d) shall be served in  
39 accordance with the notice provisions of the lease. If no notice  
40 provisions exist in the lease, the commercial tenant shall provide

**Commented [MH15]:**

Defines "small business" as having up to 500 employees.

The term never shows up again after being defined, so it doesn't appear to be any cap on the size of company.

**Commented [MH16]:**

Six year lease with \$200K of prorated Tenant Improvements? No problem, you can walk.

**Commented [MH17]:**

Tenant dictates the lease modification. No requirement that it be commercially viable.

**Commented [MH18]:**

If the landlord doesn't meet the demands of the tenant, the tenant can walk.

**Commented [MH19]:**

If tenant demand is not met, the lease terminates regardless of how much the property owner put into the building.

Rent accrual stops at that point.

All third-party guaranties are also terminated.

**Commented [MH20]:**

3 Months rent is the only penalty for breaking a lease. All other debt to the building owners is absolved.

1 the notice through certified mail, return receipt requested,  
2 recognized overnight carrier, personal delivery, or any other  
3 manner where actual receipt occurs to the landlord or the  
4 landlord's designated agent.

5 (f) If a commercial tenant and landlord reach a mutually  
6 satisfactory agreement pursuant to this section, the commercial  
7 tenant shall not have a subsequent option to terminate its lease  
8 under this section at a later date.

9 (g) This section shall not apply to any publicly traded company  
10 or a company that is owned by, or is affiliated with, a publicly  
11 traded company.

12 (h) This section shall be inoperative on December 31, 2021, or  
13 two months after the declared state of emergency ends, whichever  
14 is later.

15 SEC. 3. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 the only costs that may be incurred by a local agency or school  
18 district will be incurred because this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the penalty  
20 for a crime or infraction, within the meaning of Section 17556 of  
21 the Government Code, or changes the definition of a crime within  
22 the meaning of Section 6 of Article XIII B of the California  
23 Constitution.

24 SEC. 4. This act is an urgency statute necessary for the  
25 immediate preservation of the public peace, health, or safety within  
26 the meaning of Article IV of the California Constitution and shall  
27 go into immediate effect. The facts constituting the necessity are:

28 In order to mitigate the economic hardships to tenants of  
29 commercial real property, including businesses, nonprofit  
30 organizations, and eating or drinking establishments, resulting  
31 from the coronavirus (COVID-19), it is necessary that this act take  
32 effect immediately.

33 SECTION 1. Section 1951.9 is added to the Civil Code, to  
34 read:

35 1951.9. (a) It shall be unlawful for a person, business, or other  
36 entity to terminate a tenancy, serve notice to terminate a tenancy,  
37 use lockout or utility shutoff actions to terminate a tenancy, or  
38 otherwise endeavor to evict a tenant of commercial real property,  
39 including a business or nonprofit organization, during the pendency  
40 of the state of emergency proclaimed by the Governor on March

**Commented [MH21]:**  
Poorly written. This is meant to exempt tenant franchisee's but it actually also exempts corporate landlords....

**Commented [MH22]:**  
MINIMUM of 22 months to engage the lease ejection seat.... Maybe a lot longer.

1 4, 2020, related to COVID-19, unless the tenant has been found  
2 to pose a threat to the property, other tenants, or a person, business,  
3 or other entity.

4 ~~(b) (1) An eviction in violation of this section shall be deemed~~  
5 ~~void, against public policy, and unenforceable. Harassment or~~  
6 ~~mistreatment of or retaliation against a tenant by a person, business,~~  
7 ~~or other entity in order to force abrogation of a lease is punishable~~  
8 ~~by a fine of not more than two thousand dollars (\$2,000) for each~~  
9 ~~violation.~~

10 ~~(2) A violation of this section shall constitute an unlawful~~  
11 ~~business practice and an act of unfair competition within the~~  
12 ~~meaning of Section 17200 of the Business and Professions Code.~~  
13 ~~The remedies and penalties provided by this section are cumulative~~  
14 ~~to each other, the remedies under Section 17200 of the Business~~  
15 ~~and Professions Code, and the remedies or penalties available~~  
16 ~~under all other laws of this state.~~

17 ~~(c) An eviction in violation of this section that occurred after~~  
18 ~~the proclamation of the state of emergency but before the effective~~  
19 ~~date of this section shall be deemed void, against public policy,~~  
20 ~~and unenforceable.~~

21 ~~(d) If a tenant does not pay rent during any or all months~~  
22 ~~occurring during the state of emergency, the sum total of that rent~~  
23 ~~shall be due 12 months after the date the state of emergency ends,~~  
24 ~~unless the tenant has reached an agreement with the person,~~  
25 ~~business, or other entity to pay the sum total of that rent at a date~~  
26 ~~later than the end of the month containing the date 12 months after~~  
27 ~~the end of the state of emergency. The nonpayment of rent that~~  
28 ~~would have been due during the state of emergency shall not be~~  
29 ~~grounds for an unlawful detainer. Notwithstanding any lease~~  
30 ~~provision to the contrary, no late fees may be imposed for rent that~~  
31 ~~became due during the state of emergency.~~

32 ~~(e) It is not a violation of this section for a person, business, or~~  
33 ~~other entity to continue an eviction process that was lawfully begun~~  
34 ~~prior to the proclamation of the state of emergency.~~

35 ~~(f) This section shall serve as a complete affirmative defense~~  
36 ~~in unlawful detainer proceedings.~~

37 ~~(g) Written notice of protections afforded by this section shall~~  
38 ~~be provided to tenants of commercial real property within 30 days~~  
39 ~~of the effective date of this section.~~

1 (h) No writ of possession for commercial real property may be  
2 enforced while the state of emergency is in effect.

3 (i) This section does not preempt any local ordinance prohibiting  
4 the same or similar conduct or imposing a more severe penalty for  
5 the same conduct prohibited by this section.

6 SEC. 2. (a) For purposes of this section, “commercial tenant”  
7 means a business that operates primarily in California that meets  
8 all of the following:

9 (1) The commercial tenant’s primary business is a small  
10 business, or is an eating or drinking establishment, place of  
11 entertainment, or performance venue.

12 (2) The commercial tenant has experienced a decline of 40  
13 percent or more of monthly revenue as compared to two months  
14 either before a state or local government shelter in place order  
15 took effect or as compared to the same month in 2019, and, if an  
16 eating or drinking establishment, place of entertainment, or  
17 performance venue, a decline of 25 percent or more in capacity  
18 due to a social or physical distancing order or safety concerns; and  
19 is subject to regulations to prevent the spread of COVID-19 that  
20 will financially impair the business when compared to the period  
21 before the shelter in place order took effect (financial criteria).

22 (b) A commercial tenant described in subdivision (a) who wishes  
23 to modify its commercial lease, may engage in good faith  
24 negotiations with its landlord to modify any rent or economic  
25 requirement regardless of the term remaining on the lease.

26 (c) The commercial tenant may serve written notice on the  
27 premises landlord by affirming, under the penalty of perjury, that  
28 the commercial tenant meets the financial criteria and stating the  
29 modifications the commercial tenant desires to obtain (negotiation  
30 notice). The negotiation notice shall be served in accordance with  
31 the notice provisions of the lease. If no notice provisions exist in  
32 the lease, the commercial tenant shall provide the negotiation notice  
33 through certified mail, return receipt requested, recognized  
34 overnight carrier, personal delivery, or any other manner where  
35 actual receipt occurs to the landlord or landlord’s designated agent.  
36 However, a commercial tenant that was prevented from opening  
37 or required to delay opening its business because of a  
38 shelter in place order shall not be required to demonstrate the  
39 financial criteria.

1 ~~(d) If the commercial tenant and landlord do not reach a~~  
2 ~~mutually satisfactory agreement within 30 days of the date the~~  
3 ~~landlord received the negotiation notice, then within 10 days~~  
4 ~~thereafter, the commercial tenant may terminate the lease without~~  
5 ~~any liability for future rent, fees, or costs that otherwise may have~~  
6 ~~been due under the lease by providing written notification to the~~  
7 ~~landlord as set forth in subdivision (c) (termination notice).~~  
8 ~~Notwithstanding the previous sentence, the commercial tenant is~~  
9 ~~obligated to pay previously due rent, in an amount no greater than~~  
10 ~~the sum of the following: (1) a maximum of three months' worth~~  
11 ~~of the past due rent incurred during the civil authority and~~  
12 ~~regulations related to COVID-19 (or a lesser sum as may be~~  
13 ~~actually unpaid), and (2) all rent incurred and unpaid during a time~~  
14 ~~unrelated to COVID-19 through the date of the termination notice~~  
15 ~~(payment). The payment shall be paid to the landlord within 12~~  
16 ~~months of the termination notice. The tenant is required to vacate~~  
17 ~~the premises within 14 days of the landlord's receipt of the~~  
18 ~~termination notice. Upon service of the termination notice, the~~  
19 ~~lease and any third party guaranties associated with the lease shall~~  
20 ~~also terminate and shall no longer be enforceable.~~

21 ~~(e) If a commercial tenant and landlord reach a mutually~~  
22 ~~satisfactory agreement pursuant to this section, the commercial~~  
23 ~~tenant shall not have a subsequent option to terminate its lease~~  
24 ~~under this section at a later date.~~

25 ~~(f) This section shall not apply to any publicly traded company~~  
26 ~~or a company that is owned by or is affiliated with a publicly traded~~  
27 ~~company.~~

28 ~~(g) This section shall be inoperative on December 31, 2021, or~~  
29 ~~two months after the declared state of emergency ends, whichever~~  
30 ~~is later.~~

31 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
32 ~~Section 6 of Article XIII B of the California Constitution because~~  
33 ~~the only costs that may be incurred by a local agency or school~~  
34 ~~district will be incurred because this act creates a new crime or~~  
35 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
36 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
37 ~~the Government Code, or changes the definition of a crime within~~  
38 ~~the meaning of Section 6 of Article XIII B of the California~~  
39 ~~Constitution.~~

1     ~~SEC. 4. This act is an urgency statute necessary for the~~  
2 ~~immediate preservation of the public peace, health, or safety within~~  
3 ~~the meaning of Article IV of the California Constitution and shall~~  
4 ~~go into immediate effect. The facts constituting the necessity are:~~  
5     ~~In order to mitigate the economic hardships to tenants of~~  
6 ~~commercial real property, including businesses and non-profit~~  
7 ~~organizations, resulting from COVID-19, it is necessary that this~~  
8 ~~act take effect immediately.~~

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