

JAN 22 2021

A BILL FOR AN ACT

RELATING TO COMMERCIAL TENANT PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 127A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§127A- Commercial tenant protection. (a) It shall be
5 unlawful, during the effective period of any emergency
6 proclamation and for ninety days following the termination of
7 that effective period, for a commercial landlord to initiate or
8 to continue proceedings to collect past-due rent from an
9 impacted commercial tenant or to evict an impacted commercial
10 tenant if the impacted commercial tenant has served written
11 notice to the commercial landlord of the tenant's status as an
12 impacted commercial tenant.

13 (b) The unpaid balance of any rent that has accrued on the
14 commercial tenancy of any impacted commercial tenant during the
15 effective period of an emergency proclamation shall be due at
16 the end of the month containing the date twelve months after the
17 end of the effective period of the final emergency proclamation



1 unless the commercial landlord and the impacted commercial
2 tenant has reached an agreement to pay the balance at a later
3 date.

4 (c) An impacted commercial tenant who wishes to modify the
5 tenant's commercial lease during the effective period of an
6 emergency proclamation or within sixty days after the end of the
7 effective period may engage in good faith negotiations with the
8 tenant's landlord to modify the rent or other economic
9 requirement of the lease. The impacted commercial tenant may
10 initiate these negotiations by serving written notice, including
11 notice of the tenant's status as an impacted commercial tenant,
12 to the commercial landlord. If the impacted commercial tenant
13 and the commercial landlord do not reach a mutually satisfactory
14 agreement within thirty days of the landlord's receipt of
15 notice, the tenant may terminate the lease by serving notice of
16 termination to the landlord. If the impacted commercial tenant
17 terminates the lease, the tenant shall have fourteen days from
18 the date of service to vacate the property; provided that if the
19 impacted commercial tenant has vacated the property within those
20 fourteen days, the following shall apply:

21 (1) The lease shall terminate;



- 1 (2) No further liability for rent, fees, or costs shall
2 accrue under the lease;
- 3 (3) Any third-party guaranties associated with the lease
4 shall terminate and shall no longer be enforceable;
5 and
- 6 (4) In lieu of any other damages, the impacted commercial
7 tenant shall, within twelve months of vacating the
8 property, pay the landlord all of the following:
- 9 (A) Three months of rent as specified under the most
10 recent terms of the lease or the actual amount of
11 unpaid rent that accrued during the effective
12 period of any emergency proclamation, whichever
13 is less; and
- 14 (B) All unpaid rent that accrued prior to the
15 effective period of the initial emergency
16 proclamation.
- 17 If the impacted commercial tenant and the commercial landlord
18 reach an agreement pursuant to this subsection, the tenant shall
19 not have a subsequent option to terminate the lease under this
20 subsection at a later date.



1 (d) Remedies provided under this section are cumulative
2 and do not preclude any remedies available to tenants under any
3 other law.

4 (e) A commercial landlord who willfully violates this
5 section shall be liable to the impacted commercial tenant in a
6 civil action for the following:

7 (1) Actual damages to the tenant;

8 (2) An amount no less than \$250 and no more than \$2,000
9 for each incident constituting a violation; and

10 (3) Reasonable attorney's fees arising from the civil
11 action.

12 (f) For the purposes of this section:

13 "Commercial landlord" means any person, business, or other
14 entity that owns or manages commercial property, or their agent.

15 "Commercial tenant" means a tenant occupying commercial
16 real property pursuant to a lease including but not limited to
17 businesses or nonprofit organizations.

18 "Emergency proclamation" means an emergency proclamation
19 issued by the office of the governor relating to coronavirus
20 disease 2019 (COVID-19).



1 "Impacted commercial tenant" means a commercial tenant that
2 operates primarily in Hawaii, occupies commercial real property
3 pursuant to a lease, and meets one of the following criteria:

4 (1) The commercial tenant has experienced a decline of
5 twenty per cent or more in average monthly revenue
6 over the two most recent calendar months when compared
7 to:

8 (A) The commercial tenant's average monthly revenue
9 for the two calendar months before a state or
10 local government shelter-in-place order took
11 effect; or

12 (B) The commercial tenant's average monthly revenue
13 for the same calendar months in 2019;

14 (2) The commercial tenant was prevented from opening or
15 was required to delay opening the tenant's business
16 because of a state of emergency relating to COVID-19;
17 or

18 (3) The commercial tenant has suffered a decline of
19 fifteen per cent or more in capacity due to compliance
20 with an official public health and safety guideline
21 for preventing the spread of COVID-19."



1 SECTION 2. New statutory material is underscored.

2 SECTION 3. This Act shall take effect upon its approval
3 and shall be repealed on July 1, 2022.

4

INTRODUCED BY: 



S.B. NO. 563

Report Title:

Commercial Tenants Protection; Eviction Moratorium; Rental Deferment

Description:

Prohibits a commercial landlord from initiating or continuing any action to evict or collect unpaid rent from a commercial tenant that has been adversely impacted by the economic effects of COVID-19 or official measures intended to mitigate the spread of COVID-19. Sunsets 7/1/2022.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

