

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

SENATE BILL

No. 939

Introduced by Senators Wiener and Lena Gonzalez

(Principal coauthor: ~~Senator Skinner~~)

(Principal coauthors: Assembly Members Bonta, ~~Burke~~, Chiu, and Ting)

(Coauthor: Assembly Member Kalra)

February 6, 2020

An act to add Section ~~396.1~~ 1951.9 to the ~~Penal~~ 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 ~~the eviction of a person, business, or other entity from evicting~~ tenants of commercial real property, including businesses and ~~non-profit~~ *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 a misdemeanor, an act of unfair competition, 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.*

~~By adding a new crime, this bill would impose a state-mandated local program.~~

~~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.~~

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.

Vote: $\frac{2}{3}$. 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 396.1 is added to the Penal Code, to read:~~
2 ~~396.1. (a) It shall be unlawful for a person, business, or other~~
3 ~~entity to evict a tenant of commercial real property, including a~~
4 ~~business or non-profit organization, during the pendency of the~~
5 ~~State of Emergency proclaimed by the Governor on March 4, 2020,~~
6 ~~related to COVID-19.~~
7 ~~(b) (1) A violation of this section is a misdemeanor punishable~~
8 ~~by imprisonment in a county jail for a period not exceeding one~~
9 ~~year, or by a fine of not more than ten thousand dollars (\$10,000),~~
10 ~~or by both that fine and imprisonment.~~
11 ~~(2) A violation of this section shall constitute an unlawful~~
12 ~~business practice and an act of unfair competition within the~~
13 ~~meaning of Section 17200 of the Business and Professions Code.~~
14 ~~The remedies and penalties provided by this section are cumulative~~
15 ~~to each other, the remedies under Section 17200 of the Business~~
16 ~~and Professions Code, and the remedies or penalties available~~
17 ~~under all other laws of this state.~~
18 ~~(c) An eviction in violation of this section that occurred after~~
19 ~~the Proclamation of the State of Emergency but before the effective~~
20 ~~date of this section shall be deemed void, against public policy,~~
21 ~~and unenforceable.~~
22 ~~(d) It is not a violation of this section for a person, business, or~~
23 ~~other entity to continue an eviction process that was lawfully begun~~
24 ~~prior to the Proclamation of the State of Emergency.~~
25 ~~(e) This section does not preempt any local ordinance prohibiting~~
26 ~~the same or similar conduct or imposing a more severe penalty for~~
27 ~~the same conduct prohibited by this section.~~
28 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution because~~

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

8 *SECTION 1. Section 1951.9 is added to the Civil Code, to read:*

9 *1951.9. (a) It shall be unlawful for a person, business, or other*
10 *entity to terminate a tenancy, serve notice to terminate a tenancy,*
11 *use lockout or utility shutoff actions to terminate a tenancy, or*
12 *otherwise endeavor to evict a tenant of commercial real property,*
13 *including a business or nonprofit organization, during the*
14 *pendency of the state of emergency proclaimed by the Governor*
15 *on March 4, 2020, related to COVID-19, unless the tenant has*
16 *been found to pose a threat to the property, other tenants, or a*
17 *person, business, or other entity.*

18 *(b) (1) An eviction in violation of this section shall be deemed*
19 *void, against public policy, and unenforceable. Harassment or*
20 *mistreatment of or retaliation against a tenant by a person,*
21 *business, or other entity in order to force abrogation of a lease is*
22 *punishable by a fine of not more than two thousand dollars*
23 *(\$2,000) for each violation.*

24 *(2) A violation of this section shall constitute an unlawful*
25 *business practice and an act of unfair competition within the*
26 *meaning of Section 17200 of the Business and Professions Code.*
27 *The remedies and penalties provided by this section are cumulative*
28 *to each other, the remedies under Section 17200 of the Business*
29 *and Professions Code, and the remedies or penalties available*
30 *under all other laws of this state.*

31 *(c) An eviction in violation of this section that occurred after*
32 *the proclamation of the state of emergency but before the effective*
33 *date of this section shall be deemed void, against public policy,*
34 *and unenforceable.*

35 *(d) If a tenant does not pay rent during any or all months*
36 *occurring during the state of emergency, the sum total of that rent*
37 *shall be due 12 months after the date the state of emergency ends,*
38 *unless the tenant has reached an agreement with the person,*
39 *business, or other entity to pay the sum total of that rent at a date*
40 *later than the end of the month containing the date 12 months after*

1 *the end of the state of emergency. The nonpayment of rent that*
2 *would have been due during the state of emergency shall not be*
3 *grounds for an unlawful detainer. Notwithstanding any lease*
4 *provision to the contrary, no late fees may be imposed for rent*
5 *that became due during the state of emergency.*

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

9 *(f) This section shall serve as a complete affirmative defense in*
10 *unlawful detainer proceedings.*

11 *(g) Written notice of protections afforded by this section shall*
12 *be provided to tenants of commercial real property within 30 days*
13 *of the effective date of this section.*

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

16 *(i) This section does not preempt any local ordinance prohibiting*
17 *the same or similar conduct or imposing a more severe penalty*
18 *for the same conduct prohibited by this section.*

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

22 *(1) The commercial tenant’s primary business is a small*
23 *business, or is an eating or drinking establishment, place of*
24 *entertainment, or performance venue.*

25 *(2) The commercial tenant has experienced a decline of 40*
26 *percent or more of monthly revenue as compared to two months*
27 *either before a state or local government shelter-in-place order*
28 *took effect or as compared to the same month in 2019, and, if an*
29 *eating or drinking establishment, place of entertainment, or*
30 *performance venue, a decline of 25 percent or more in capacity*
31 *due to a social or physical distancing order or safety concerns;*
32 *and is subject to regulations to prevent the spread of COVID-19*
33 *that will financially impair the business when compared to the*
34 *period before the shelter-in-place order took effect (financial*
35 *criteria).*

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

1 (c) *The commercial tenant may serve written notice on the*
2 *premises landlord by affirming, under the penalty of perjury, that*
3 *the commercial tenant meets the financial criteria and stating the*
4 *modifications the commercial tenant desires to obtain (negotiation*
5 *notice). The negotiation notice shall be served in accordance with*
6 *the notice provisions of the lease. If no notice provisions exist in*
7 *the lease, the commercial tenant shall provide the negotiation*
8 *notice through certified mail, return receipt requested, recognized*
9 *overnight carrier, personal delivery, or any other manner where*
10 *actual receipt occurs to the landlord or landlord’s designated*
11 *agent. However, a commercial tenant that was prevented from*
12 *opening or required to delay opening its business because of a*
13 *shelter-in-place order shall not be required to demonstrate the*
14 *financial criteria.*

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

35 (e) *If a commercial tenant and landlord reach a mutually*
36 *satisfactory agreement pursuant to this section, the commercial*
37 *tenant shall not have a subsequent option to terminate its lease*
38 *under this section at a later date.*

1 (f) *This section shall not apply to any publicly traded company*
2 *or a company that is owned by or is affiliated with a publicly traded*
3 *company.*

4 (g) *This section shall be inoperative on December 31, 2021, or*
5 *two months after the declared state of emergency ends, whichever*
6 *is later.*

7 SEC. 3. *No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution because*
9 *the only costs that may be incurred by a local agency or school*
10 *district will be incurred because this act creates a new crime or*
11 *infraction, eliminates a crime or infraction, or changes the penalty*
12 *for a crime or infraction, within the meaning of Section 17556 of*
13 *the Government Code, or changes the definition of a crime within*
14 *the meaning of Section 6 of Article XIII B of the California*
15 *Constitution.*

16 ~~SEC. 3.~~

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

21 In order to mitigate the economic hardships to tenants of
22 commercial real property, including businesses and non-profit
23 organizations, resulting from COVID-19, it is necessary that this
24 act take effect immediately.