

1SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1103 (Menjivar)
Version: April 22, 2024
Hearing Date: April 30, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Tenancy of commercial real properties: agreements: securities

DIGEST

This bill extends various protections and notice requirements for lease terminations or rent increases to qualified commercial tenants.

EXECUTIVE SUMMARY

Small businesses are vital to California's economy and its communities. However, in recent years, many small businesses in the state have struggled to pay their rent and stay in operation. In addition, there are reports that landlords provide contracts not in a language the small business owner understands, often increase rent or maintenance fees substantially without notice, and provide notices of termination of community businesses' leases with little to no advance notice. To remedy these instances and provide California's small businesses greater protections for the spaces they lease, this bill extends various protections in the law for residential tenants to commercial tenants, and provides protections against landlord rent increases. This bill: requires that landlords of qualified commercial tenants provide notice at least 30 days before a termination of the lease if the commercial tenant has occupied the space for less than a year, and at least 60 days before for a commercial tenant that has occupied the space for more than a year; requires that landlords provide qualified commercial tenants advance notice, as specified, for increases in rent, depending on the length of time for which the tenant has occupied the space; requires a landlord, when a commercial lease agreement is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean, to provide the qualified commercial tenant with a translated contract; limits deposits for a qualified commercial tenant to no greater than one month of rent; and places limits and transparency requirements on rent increases upon qualified commercial tenants for a landlord's operating costs, as specified. SB 1103 is sponsored by a coalition of community and legal services nonprofits, and is opposed by a collection of business, financial, and housing associations.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that, in all periodic leases of land or tenements, the landlord may, upon giving notice in writing to the tenant as prescribed, change the terms of the lease upon the expiration of a period at least as long as the rental term, as specified. Provides that, in all leases of a residential dwelling or any interest in it, the landlord may increase the rent upon giving written notice to the tenant by delivering a copy to the tenant personally or by serving a copy by mail. IF the proposed rent increase is 10 percent or less than the rental amount charged during the 12 months prior, the notice of the rent increase must be delivered at least 30 days before the effective date of the increase. Provides that, if the proposed rent increase is greater than 10 percent of the rent charged during any time in the 12 months prior, the notice must be delivered at least 90 days before the effective date of the increase. (Civ. Code § 827.)
- 2) Requires that any person engaged in a trade or business who negotiates a specified contract or agreement primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean deliver to the other party to the contract or agreement, or anyone who will be signing the agreement, and before the execution of that contract or agreement, a translation of the contract or agreement in the language in which the contract was negotiated. (Civ. Code § 1632(b).)
 - a) Provides an exception to this requirement where the party with whom the person engaged in a trade or business is negotiating negotiates the terms of the contract or agreement through their own interpreter.
 - b) Provides that the terms in the English version of the contract shall determine the rights and obligations of the parties, and that the translated version may only be used in court as evidence to show that no contract was entered into because of substantial differences in material terms between the English version and the translated version.
 - c) Provides that an aggrieved person for a violation of this provision may rescind the contract or agreement, as provided.
- 3) Provides that, when residential real property is leased for an unspecified term, the lease is deemed renewed at the end of the term implied by law, unless one of the parties gives written notice to the other of their intent to terminate the tenancy. (Civ. Code § 1946.1.)
- 4) Provides that, if the residential tenant has resided in the dwelling for less than a year, the landlord must provide notice of termination at least 30 days prior to the termination, and that the landlord must provide notice of termination at least 60 days prior to the termination if the tenant has resided in the residential property for a year or more, except as provided. Provides that a tenant must provide notice of their intention to terminate their tenancy for a periodic tenancy at least as long as the

term of the periodic tenancy. If the tenant has received a notice of termination from the owner, the tenant may provide a notice of termination for a period at least as long as the term of a periodic tenancy, if such termination occurs before the owner's date of termination. (Civ. Code § 1946.1(b)-(d).)

- 5) Provides that the payment of a deposit by the tenant must be held by the landlord for the tenant, and provides that a landlord may only claim from the deposit amount only amounts reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises caused by the tenant, or to clean the premises upon termination of the tenancy. (Civ. Code § 1950.7.)
- 6) Prohibits a landlord of a residential property that is used as the dwelling of a tenant from demanding or receiving security in an amount greater than two months' rent if the dwelling is unfurnished, or three months' rent if furnished, until July 1, 2024. Prohibits a landlord of a residential property that is used as a dwelling of a tenant from demanding or receiving security in an amount greater than one month of rent, in addition to any rent for the first month paid on or before the initial occupancy. (Civ. Code § 1950.5.)
- 7) Defines a "microenterprise" as a sole proprietorship, partnership, limited liability company, or corporation that:
 - a) has five or fewer employees, including the owner, that may be part or full time employees;
 - b) generally lacks sufficient access to loans, equity, or other financial capital.

This bill:

- 1) Provides, for the purposes of its various statutory changes, the following definitions:
 - a) "Qualified commercial tenant" as a tenant of commercial real property that is a microenterprise, a restaurant with fewer than 25 employees, or a nonprofit organization with fewer than 50 employees. Requires that a qualified commercial tenant provide a self-attestation regarding the number of employees it has.
 - b) "Nonprofit organization" as any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986.
 - c) "Microenterprise" as the same meaning as the term is defined in Business and Professions Code Section 18000(a).
 - d) "Commercial real property" as all real property in the state, except dwelling units, mobilehomes, and recreational vehicles, as specified.
- 2) Extends the requirement that a person engaged in a trade or business that negotiates a contract or agreement in Spanish, Chinese, Tagalog, Vietnamese, or Korean provide a translated version of the contract or agreement in the language in which it

was negotiated to apply to a sublease, rental contract or agreement, or other term of tenancy for a commercial lease agreement for qualified commercial tenants.

- a) Specifies that the exception to this requirement for when the party negotiating with the person engaged in a trade or business negotiates through their own interpreter does not apply to the specified commercial lease agreements.
 - b) Specifies that only a qualified commercial tenant may rescind a contract for a violation of the translation requirement.
- 3) Extends the above-described requirement that a landlord provides notice of rent increases, as specified, for commercial real property by a qualified commercial tenant.
 - 4) Extends the above-described requirements that a tenancy is deemed renewed unless a party notifies the other party of their intent to terminate the tenancy to commercial real property by a qualified commercial tenant.
 - 5) Extends the above-described requirement that a landlord provide advance notice, as specified, to a tenant for the termination of a tenancy to commercial real property for a qualified commercial tenant.
 - a) Provides that an owner of a commercial real property leasing to a qualified commercial tenant must give notice at least 90 days prior to the proposed date of termination if the tenant has occupied the property for three or more years.
 - 6) Provides that a landlord shall not demand or receive a payment or deposit of money from a qualified commercial tenant in an amount or value in excess of an amount equal to one month's rent, in addition to rent for the first month paid on or before initial occupancy. Applies this limitation on or after January 1, 2025.
 - 7) Provides that a landlord may increase a qualified commercial tenant's rent to recover building operating costs (Common Area Maintenance fees) only if the following apply:
 - a) The costs are limited to maintenance, a repair by the landlord that is not required by the lease, landscaping, security, trash, disposal, or insurance;
 - b) The costs were not paid by the tenant directly to a third party;
 - c) A third party, tenant, or insurance did not reimburse the landlord for the costs;
 - d) The costs are allocated proportionately per tenant, by square footage or other method substantiated through supporting documentation provided by the landlord;
 - e) The landlord notifies the tenant of the costs, and the costs were incurred within 18 months of this notification; and

- f) The landlord provides the tenant supporting documentation providing that operating costs have been incurred, or are reasonably expected to be incurred within the next 12 months, either:
 - i. 30 days before the rent increase, if the rent increase is less than 10 percent of the rent charged during the last 12 months;
 - ii. 90 days before the rent increase if the rent increase is 10 percent or more of the rent charged during the last 12 months.
- 8) Defines “supporting evidence,” as a dated and itemized quote, contract, receipt, or invoice from a licensed contractor or provider of services that includes, but is not limited to, a tabulation showing how the costs are allocated among tenants proportionately, as required, and a signed and dated attestation by the landlord that the documentation and costs are true and correct.
- 9) Provides that, in an unlawful detainer action, ejectment, or other action to recover possession of the premises, a qualified commercial tenant may raise, as an affirmative defense, that the landlord did not comply with (7), above, regarding increases in rent to recover building operating costs.
- 10) Provides that a landlord who violates (7), above, regarding allowable increases in rent to recover building operating costs, shall be subject to a civil penalty of three times the amount of actual damages proximately suffered by the qualified commercial tenant, and that the qualified commercial tenant shall be entitled to reasonable attorney’s fees and costs reasonably incurred in connection with obtaining the civil penalty.
- 11) Provides that any waiver of a right in (7) through (9), above, is void and unenforceable as a matter of public policy.

COMMENTS

1. Author’s statement

According to the author:

Small businesses and nonprofits are a vital resource for many in my district and across California. Their storefronts contribute to the aesthetics and vitality of our business corridors, as well as increase the walkability and cultural representation within neighborhoods. Communities also benefit from programs provided by community-based nonprofits. Government agencies alone cannot close the service gaps afflicting the most vulnerable Californians and we rely on the dedicated service of nonprofits. SB 1103 will protect those making immeasurable contributions to their communities and local economies. Specifically, SB 1103 will expand existing translation requirements to commercial leases that are

negotiated in a language other than English, limits security deposits to one month's rent for commercial tenant small businesses and nonprofits, and increases the required notice periods for small business and small nonprofit commercial tenants facing a rent increase or termination of tenancy. These common sense measures are needed in order preserve and protect the small businesses and non-profits that are essential to the wellbeing our communities.

2. The state of small businesses in California

Small businesses are important members of the California economy and of communities across the state. They provide vital services where people live, support entrepreneurship and innovation in the marketplace, and offer culturally-relevant goods and services to communities through California. Studies have found that minority-owned small businesses, which account for 46 percent of all of the state's small businesses, support 10.9 percent of all jobs in the state, generate 3.5 percent of the state's economic output, and contribute \$192.8 billion in economic output a year.¹

However, the state of small businesses in California is dire. One survey of small businesses with less than \$100,000 in annual revenue found that 78 percent say they are struggling to cover their rent.² Nearly half – 46 percent – reported being one or more months behind on their rent. An astonishing 56 percent of those surveyed in that study said that they expect they can only survive three months or less without additional funding or market changes. A survey of nonprofits in California that work with thousands of small business owners also found that 86 percent of respondents reported that the small businesses they work with often (54 percent) or sometimes (32 percent) face displacement.³ As is noted in that report, the Costa-Keene-Seymour Commercial Property Investment Act prevents local governments from enacting local ordinances for commercial rent control protections.

This data paints a picture of a potential looming crisis in small business shutdowns and foreclosures. This looming crisis may in part be due to the dramatic effects that the COVID-19 pandemic had on small businesses. Reports show that small businesses were disproportionately affected by the pandemic, as many reported difficulties navigating and applying for federal relief programs, and many experienced major losses in revenue far beyond the height of the pandemic.⁴ While California enacted various

¹ California Office of the Small Business Advocate, The State of Diverse Businesses in California (Jun. 2023), Executive Summary, available at <https://business.ca.gov/californias-minority-owned-small-businesses-contribute-192-8-billion-in-economic-output-and-support-over-2-5-million-jobs-annually-new-report-shows/>.

² Small Business Majority, Survey: smallest businesses face a looming rent crisis (May 20, 2021), available at <https://smallbusinessmajority.org/our-research/survey-smallest-businesses-face-looming-rent-crisis>.

³ Kevin Stein et al, Disrupting Displacement Financing in Oakland and Beyond, California Reinvestment Coalition (Jun. 2018), p. 24.

⁴ Small Business Majority, Scientific Opinion Poll: Small businesses continue to face closures in 2021 (Jan. 27, 2021), available at

programs to assist small businesses impacted by COVID-19, such as the California Venues Grant Program and the Small Business COVID-19 Relief Grant Program, those programs have since ended.

The sponsors of this bill also cite anecdotes of small businesses being given significant rent increases, unclear and unfair lease terms, and exorbitant added fees. In one example provided, a small restaurant in Los Angeles was given an 89 percent increase in their common area maintenance fees, to be paid immediately.

The dire state of small businesses in California has important implications for California's communities and for historically-disenfranchised communities in the state. Data indicates that minority-owned small businesses have a harder time paying rent and were disproportionately affected by increased interest rates and rent spikes.⁵ Minority business owners were also the businesses hardest-hit by COVID-19. The struggles that minority-owned small businesses are experiencing is part of the larger crisis of gentrification that the Bay Area and other areas of the state are continuing to experience.⁶

3. SB 1103 aims to protect California's small businesses from predatory actions by corporate landlords

To address this crisis and provide protections for the state's small businesses, SB 1103 proposes to extend a variety of protections in place for residential tenants to specified small businesses and non-profits. These protections aim to limit the capital a small business must have in order to lease a space for their business, ensure they receive notice for rent increases and terminations, and provide transparency and proportionality regarding rent increases for operating costs. It makes these changes specifically for micro-enterprises as defined in Section 18000 of the Business and Professions Code, restaurants with fewer than 25 employees, and nonprofits with fewer than 50 employees. Micro-enterprises are defined pursuant to the Business and Professions Code as sole proprietorships, partnerships, limited liability companies, or corporations that have five or fewer full or part-time employees and which generally lack sufficient access to loans, equity or other financial capital. (Bus. & Prof. Code § 18000.) SB 1103 requires that the qualified commercial tenant provide the landlord with a self-attestation regarding the number of employees it has.

- a. *SB 1103 requires that small business owners be provided a translated copy of their commercial lease agreement under specified circumstances*

Current law provides that a person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, either orally or in

⁵ *Id.*

⁶ Stein et al, *supra* note 2.

writing, and entering into specified types of agreements, must provide the other contracting party or other person signing the agreement with a translation of the contract in the language in which the negotiating took place. (Civ. Code § 1632(b).) Existing law requires that this translated version of the contract be provided prior to the execution of the contract. Currently, this requirement applies to: certain contracts; specified personal loans or extensions of credit secured or not secured by real property; a residential lease, sublease, or other rental contract or agreement; reverse mortgages; legal services contracts by attorneys; and a foreclosure consulting contract. An exception is provided for instances in which the other party negotiates the terms of the contract through their own interpreter. (Civ. Code § 1632(h).) This provision further provides that a failure to comply with the translation requirements provides that an aggrieved person may rescind the contract. (Civ. Code § 1632(k).)

SB 1103 extends these translation requirements to commercial leases, subleases, or rental contract or other term of tenancy contract or agreement covering a nonresidential-zoned commercial space. It exempts such commercial leases from the exception for instances in which the other party to the contract negotiates with the assistance of a translator. It also specifies that, if a translated version of the commercial lease agreement is not provided, only a tenant may rescind the contract. Through this change, SB 1103 ensures that any business that negotiates a commercial lease in Spanish, Chinese, Tagalog, Vietnamese, or Korean will receive from the commercial landlord a translation of the final written contract.

b. *SB 1103 extends requirements for notices of rent increases to small business tenants*

Current law provides certain timelines and parameters regarding when a landlord can increase the rent of a residential lease. If the proposed increase is 10 percent or less of the current rent, the landlord must deliver a notice of the increase at least 30 days before the effective date of the rent increase. (Civ. Code § 827(b).) If the rent increase is more than 10 percent, the landlord must provide the resident notice of the increase at least 90 days before the effective date of the increase.

SB 1103 applies this notice requirement for rent increases to commercial leases to specified small businesses. It defines a small business for its provisions as a micro-enterprise, as defined in Section 18000 of the Business and Professions Code, a restaurant with fewer than 25 employees, or a nonprofit with fewer than 50 employees. To ensure that commercial landlords are aware that their tenant qualifies for this extended notice, a qualifying entity must provide the landlord with a self-attestation of the number of employees it employs such that it qualifies under these provisions.

c. *SB 1103 provides notice requirements of lease terminations for small businesses*

Current law specifies that a residential lease is deemed to be automatically renewed at the end of the lease's term or the end implied by law, unless either party gives the other written notice of their intent to terminate the tenancy. (Civ. Code § 1946.1.) Current law also specifies that an owner of a residential dwelling must give notice of the lease termination at least 60 days prior to the termination when the tenant has resided in the unit for a year or more, and a tenant must give notice at least as long as the term of the periodic tenancy, if it is such a lease. If the residential tenant has resided in the unit for less than a year, the owner must provide the tenant 30 days' notice of termination.

SB 1103 extends these notice requirements to commercial leases for qualified commercial tenants. In addition, SB 1103 extends the notice period to 90 days when a qualified commercial tenant has occupied the property for three or more years.

d. *SB 1103 limits the permissible deposit for a commercial lease to one month for small business tenants*

SB 1103 also places a limit on deposits that a landlord can charge a qualified commercial tenant. Like the limits recently placed on residential tenancies (AB 12, Haney, Ch. 733, Stats. 2023), SB 1103 limits deposits to one month's rent, in addition to rent for the first month paid on or before initial occupancy, for qualified commercial tenants of commercial properties.

e. *SB 1103 provides certain limitations and transparency requirements on Common Area Maintenance (CAM) fees*

Lastly, SB 1103 provides a number of limitations on rent increases that a landlord may charge a qualified commercial tenant for building operating costs to the property. These provisions of the bill allow such increases only if specified criteria and documentation requirements are met. This includes that: the costs are limited to maintenance, a repair by the landlord that is not required by the lease, landscaping, security, trash, disposal, or insurance; the costs were not paid by the tenant directly to a third party; a third party, tenant, or insurance did not reimburse the landlord for the costs; the costs are allocated proportionately per tenant, by square footage or other method substantiated through supporting documentation provided to the tenant; the landlord notifies the tenant of the costs, and such costs were incurred within 18 months of the notification; and that the landlord provides the tenant supporting documentation proving that operating costs have been incurred, or are reasonably expected to be incurred within the next 12 months as specified. The required documentation for the costs incurred or reasonably expected to be incurred by the landlord must either be provided 30 days before the rent increase if the increase is less than 10 percent of the rent charged within the 12-month period before the increase, or 90 days before the rent increase if the increase is 10 percent or more than the rent charged in the preceding 12 months. The bill

also defines supporting documentation as a dated and itemized quote, contract, receipt, or invoice from a licensed contractor or a provider of services, including but not limited to a tabulation showing how the costs are allocated among tenants, and a signed and dated attestation by the landlord that the documentation and costs are true and correct.

4. Enforcement mechanisms for SB 1103's requirements

Because SB 1103's provisions add commercial tenancies for small businesses and nonprofits to existing protections, many of the enforcement mechanisms currently in place for those sections would apply to the protections added by SB 1103. For the translation requirements in the bill, SB 1103 merely adds commercial leases to the list of contracts that must be translated if negotiated in one of the five enumerated languages, thereby adopting the established enforcement mechanisms that already exist for every other included type of contracts. These enforcement provisions include that an aggrieved party may bring a civil cause of action to rescind the contract when the person engaged in a trade or business did not provide the required translated contract. For SB 1103's provisions that incorporate qualified commercial tenants in the notice requirements for rent increases and a termination of a tenancy that are included in Civil Code Sections 827 and 1946.1, an aggrieved qualified commercial tenant may bring a civil cause of action for the violation and raise the violation as an affirmative defense in an unlawful detainer action, as can any aggrieved party under those code sections.

For SB 1103's transparency and proportionality requirements of common area maintenance fees, the bill provides specific enforcement mechanisms. It specifies that a violation of such provisions may be an affirmative defense to an action for an unlawful detainer, ejectment, or other action to recover possession of the commercial property. It also specifies that a landlord who violates these provisions is subject to a civil penalty of three times the amount of actual damages proximately suffered by the qualified commercial tenant, and that a qualified commercial tenant is entitled to an award of costs, including reasonable attorney's fees, incurred in connection to obtaining the civil penalty. Additionally, SB 1103 specifies that a waiver of a tenant's rights under this section is void as a matter of public policy.

5. Amendments

The author has agreed to accept a number of amendments to SB 1103. These amendments address concerns with the potential impact and unintended consequences of a number of the bill's provisions. They do so by removing the section limiting deposits to one month's rent, by narrowing the definition of a qualified commercial tenant, and by requiring that a qualified tenant provide the landlord notice before or at the execution of the lease agreement, or when they wish to avail themselves of the protections while on a month-to-month lease, that they qualify for the protections under the bill's requirements. The amendments also clarify that the transparency and proportionality requirements for common area maintenance fees apply only to such

fees, and not to rent increases writ large. A full mock-up of these amendments are attached at the end of this analysis.

6. Arguments in support

According to the coalition of organizations that are sponsoring SB 1103:

SB 1103 will help small businesses and nonprofits remain in their communities and continue to provide culturally significant goods and services. Currently, many small businesses and nonprofits are struggling to stay afloat due to rising rents, inflation, and gentrification—SB 1103’s commercial tenant protections provide much-needed support to small business owners and nonprofits, and reduce the risk of these community pillars being displaced.

California, with its diverse population and varying consumer demands, is also a state with extreme income inequality. As the cost of living in California rises, many small businesses have been forced to close or have been displaced, which harms our local neighborhoods and our regional economies. Community-serving small businesses and nonprofits, pillars of our local economy, have minimal legal protections. Rent increases, unclear and unfair lease terms, as well as exorbitant added fees, make it difficult to find and stay in a commercial space. For example, a small restaurant that provides healthy food in South Los Angeles was recently informed without prior notice or back-up documentation that their common area maintenance fees (fees charged to commercial tenants for items such as landscaping, maintenance, property management, taxes, insurance, repairs, and security) would increase from \$1,000 to \$1,890 per month and was issued an eviction notice for not paying those fees immediately.

Small businesses and nonprofits would benefit greatly from commercial tenant protections; landlords are currently allowed to raise rents and evict small businesses without statutory restriction. As corporate landlords buy up more commercial properties in low-income neighborhoods, long-term community-serving small businesses and nonprofits are seeing huge rent increases and displacement. Statewide and local commercial eviction moratoriums and federal grants offered during the height of the pandemic provided much needed support to small businesses and nonprofits. Now that the moratoriums and grants have expired, small businesses and small community-serving nonprofits are vulnerable as they continue to recover from the effects of the pandemic.

SB 1103 will provide important and ground-breaking protections to small businesses and nonprofits in three ways:

- 1) Language justice and lease transparency, by requiring translation of commercial lease agreements when negotiated in non-English languages;

- 2) Fee transparency and equity, by capping security deposits at one month's rent as well as creating standards and transparency with respect to common area maintenance fees; and
- 3) Enhanced notice protections, by increasing statutory notice periods for rent increases and termination of tenancies.

According to a broad coalition of community groups and nonprofits in support of SB 1103:

Community-serving microbusinesses and nonprofits in California are struggling. Expensive rents and fees, the lingering impacts of the pandemic, and inaccessible and opaque lease terms are contributing to the escalating displacement of microbusinesses and small nonprofits. Senate Bill 1103 will help small businesses and nonprofits remain in their communities and continue to provide relevant goods and services that strengthen our neighborhoods and enhance our local economy.

Specifically, Senate Bill 1103 furthers language justice by requiring commercial leases to be translated when the agreement is negotiated in a language other than English. This brings commercial leases in line with residential leases and numerous other contracts that already have these requirements under California law – a simple step that will help immigrant entrepreneurs and business owners with limited English proficiency to understand core lease provisions and be better positioned to negotiate terms that are right for their business.

Senate Bill 1103 also helps microbusinesses and small nonprofits access commercial leasing opportunities by establishing a reasonable limit on security deposit amounts and transparency with respect to common area maintenance fees. This is directly responsive to some of the biggest challenges facing small commercial tenants as they try to navigate rising rents, increasing costs, and changing conditions.

Further, Senate Bill 1103 supports microbusinesses and small nonprofits by extending notice periods for rent increases and termination of tenancies. In many cases, Senate Bill 1103 will provide qualifying commercial tenants with up to 90 days between when the landlord provides notice of a rent increase or termination of tenancy, and when that increase or termination takes effect. These extended notice periods are absolutely crucial for providing microbusinesses and small nonprofits time to plan, find a new location if necessary, and hopefully stay in their community. This fighting chance to remain in a neighborhood is very important, as many microbusinesses and small nonprofits are community anchors, providing culturally significant and accessible food and retail for immigrant communities that are not available in other spaces.

Senate Bill 1103's enhanced notice periods will not only assist microbusinesses and small nonprofits, they will also help sustain the foundations of our neighborhoods and our local economies.

Senate Bill 1103's protections do not apply widely; they are provided only to the most vulnerable microbusinesses and small nonprofits. By tailoring the benefits in this way, Senate Bill 1103 does not affect complex business-to-business (B2B) transactions. Rather, it levels the playing field for those microbusinesses and small nonprofits that do not have the same resources, representation, or negotiating power as large commercial tenants. Senate Bill 1103 is necessary for an *equitable* small business economy, where California's immigrant and low-income entrepreneurs have a chance to find and stay in commercial spaces to provide for their families, and sustain our communities.

7. Arguments in opposition

According to a coalition of groups opposed to SB 1103, including the California Chamber of Commerce:

[SB 1103] would upend commercial real estate contracts and leasing by imposing requirements detrimental to both property owners and the small businesses and nonprofits this bill aims to protect.

SB 1103 does not recognize the fundamental differences between business-to-business (B2B) and business-to-individual (B2I) real estate transactions, which, if enacted into law, will jeopardize the flexibility and mutual benefits of commercial leasing. Capping security deposits at one month's rent disregards their essential role in risk management and post-tenancy restoration, particularly for new or financially unproven businesses, potentially dissuading landlords from leasing to these enterprises.

Additionally, the bill overlooks important elements of commercial leases, such as NNN (triple net lease) expenses necessary for property maintenance and fails to appreciate the long-term nature of these agreements. This oversight could destabilize the economic framework of commercial real estate, affecting both landlords and tenants.

Despite its intentions, SB 1103's lack of understanding in commercial leasing nuances may harm the growth and viability of small businesses and nonprofits, possibly disadvantaging the very groups it aims to support. We urge you to vote "no" on SB 1103.

SUPPORT

Bet Tzedek (sponsor)
California Association for Micro Enterprise Opportunity (sponsor)
Inclusive Action for the City (sponsor)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area (sponsor)
Public Counsel (sponsor)
Small Business Majority (sponsor)
AAPI Equity Alliance
Access Plus Capital
AHA Projects
Alliance for Community Development
AltCap California
Asian Pacific Islander Small Business Collaborative
Asociacion de Emprendedor@s
California Black Chamber of Commerce
California Coalition for Community Investment
California Community Economic Development Association
California Immigrant Policy Center
California NOW
California Youth Empowerment Service
Center for Nonprofit Management
Child Care Law Center
Child Development Corps
Chinatown Community Development Center
Chinatown Community for Equitable Development
City Heights CDC
Community Development Technologies
Community Vision Capital and Consulting
Conaxion Inc.
Council of Equity Advocacy San Diego
Courage California
Destination Crenshaw
Discovery World Early Education Center
East Bay Community Law Center
East LA Community Corporation
Eastside LEADS
Ekstrepe, LLC
El Chaparrito Tacos LLC
Ella Baker Center for Human Rights
Freedom Assembly, INC.
GO Local Sonoma County
Heal One World
Humbleroot

I Did Something Good Today Foundation
ICON CDC
Inclusive Action for the City
Inland Coalition for Immigrant Justice
Join Against Domestic Violence
KIWA
Koreatown Youth & Community Center
La Cocina
LA Más
LA Percussion Rentals
Legal Aid Foundation of Los Angeles
LISC Bay Area
LISC LA
Little Portion Social Center
Little Tokyo Community Council
Little Tokyo Service Center
Long Beach Forward
Los Angeles Neighborhood Land Trust
Madeline Garden
Mandela Partners
Microenterprise Collaborative of Inland Southern California
Mission Asset Fund
Mission Economic Development Agency
Monforte Studio
Montana Preschool Santa Monica
Multicultural Business Alliance
Oakland Indie Alliance
Pacific Asian Consortium in Employment
Pacific Community Ventures
Rediscover Center
Rise Economy
Riverside County Black Chamber of Commerce
Sac Dispensary
Sacramento Hispanic Chamber of Commerce
South Asian Network
Southeast Asian Community Alliance
Strategic Actions for a Just Economy
Sustainable Economies Law Center
Team Friday
The Independent Hospitality Coalition
Therapy for Latinx
Thai Community Development Center
United Cambodian Community
United CORE Alliance

United Neighbors in Defense Against Displacement
United Way of Greater Los Angeles
Uptima Entrepreneur Cooperative
Uptown Style Jamaican Food
Urban Soyal
Valle Vida
Vermont Slauson Economic Development Corporation
Vermont-Slauson LDC, Inc.
Village Arts
Working Solutions CDFI

OPPOSITION

Apartment Association of Greater Los Angeles
Boma California
Building Owners and Managers Association of California
California Asian Pacific Chamber of Commerce
California Association of Realtors
California Building Industry Association (CBIA)
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Mba
California Mortgage Bankers Association
California Rental Housing Association
Cupertino Chamber of Commerce
Danville Area Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Huntington Beach Chamber of Commerce
Institute of Real Estate Management (IREM)
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Livermore Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
NAIOP California
Newport Beach Chamber of Commerce
Orange County Business Council
San Diego Regional Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southern California Leadership Council
Tulare Chamber of Commerce
Walnut Creek Chamber of Commerce & Visitors Bureau

Western Manufactured Housing Communities Association

RELATED LEGISLATION

Pending Legislation: AB 500 (Davies, 2023) would have authorized a landlord of a residential property to give notice of an increase in rent by electronic mail. AB 500 died in the Assembly Judiciary Committee.

Prior Legislation:

AB 12 (Haney, Ch. 733, Stats. 2023) provided that, beginning July 1, 2024, landlords of residential real property cannot demand or receive security for a rental agreement that is more than one month's rent, in addition to any rent for the first month paid on or before initial occupancy.

SB 87 (Caballero, Ch. 7, Stats, 2021) established the California Small Business COVID-19 Relief Grant Program within California Office of Small Business Advocate (CalOSBA) to assist qualified small businesses affected by COVID-19 through administration grants, as prescribed. Repealed its provisions on January 1, 2024.

SB 151 (Committee on Budget and Fiscal Review, Ch. 74, Stats. 2021) created the California Venues Grant Program and the California Microbusiness COVID-19 Relief Grant Program within the CalOSBA for the purpose of providing grants to eligible independent live events that have been affected by the COVID-19 pandemic, among other grants and programs. Repealed both programs on December 31, 2022.

AB 1110 (Friedman, Ch. 595, Stats. 2019) required 90 days' notice if a landlord of a residential dwelling on a month-to-month tenancy increases the rent by more than 10 percent of the amount of rent previously charged.

AB 309 (Chu, Ch. 330, Stats. 2003) expanded the requirement that a person engaged in a trade or business that negotiates specified contracts or agreements in a language other than English provide a translated copy of the written contract or agreement from Spanish to Spanish, Chinese, Tagalog, Vietnamese, or Korean.

PROPOSED AMENDMENTS TO SB 1103

SECTION 1.

Section 827 of the Civil Code is amended to read:

827.

(a) (1) Except as provided in subdivision (b), in all leases of lands or tenements, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the manner prescribed by Section 1162 of the Code of Civil Procedure, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change; provided, however, that it shall be competent for the parties to provide by an agreement in writing that a notice changing the terms thereof may be given at any time not less than seven days before the expiration of a term, to be effective upon the expiration of the term.

(2) The notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

(b) (1) In all leases of a residential dwelling, commercial real property by a qualified commercial tenant, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:

(A) By delivering a copy to the tenant personally.

(B) By serving a copy by mail under the procedures prescribed in Section 1013 of the Code of Civil Procedure.

(2) If the proposed rent increase for that tenant is 10 percent or less of the rental amount charged to that tenant at any time during the 12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 30 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(3) (A) If the proposed rent increase for that tenant is greater than 10 percent of the rental amount charged to that tenant at any time during the

12 months before the effective date of the increase, either in and of itself or when combined with any other rent increases for the 12 months before the effective date of the increase, the notice shall be delivered at least 90 days before the effective date of the increase, and subject to Section 1013 of the Code of Civil Procedure if served by mail.

(B) If the proposed rent increase for that tenant is caused by a change in a tenant's income or family composition as determined by a recertification required by statute or regulation, the notice shall be delivered at least 30 days before the effective date of the increase as described in paragraph (2), and subparagraph (A) of this paragraph shall not apply.

(4) For the purposes of this subdivision, the following definitions apply:

(A) "Commercial real property" means all real property in this state, except dwelling units subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3, mobilehomes as defined in Section 798.3, and recreational vehicles as defined in Section 799.29.

(B) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(C) "Nonprofit organization" means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986.

(D) "Qualified commercial tenant" means a tenant of commercial real property that is a microenterprise, a restaurant with fewer than ~~25~~**10** employees, or a nonprofit organization with fewer than ~~50~~**20** employees. ~~A qualified commercial tenant shall provide a landlord with a self-attestation regarding the number of employees.~~ **A landlord shall provide notice of the rights created under subdivision (b) of this Section when serving commercial tenants with a notice to increase rent. Before or upon execution of the lease, a qualified commercial tenant shall provide a landlord notice that they are a qualified commercial tenant under this Section, along with a self-attestation regarding the number of employees in order to be afforded the notice periods provided by subdivision (b) of this section. For periodic or month-to-month leases, the qualified commercial tenant shall provide the landlord notice that they are a qualified commercial tenant under this Section, along with a self-attestation regarding the number of employees, at such time the protections under subdivision (b) come into place.**

(5) In all leases of commercial real property to a qualified commercial tenant under this subdivision, any rent increase is stayed or otherwise not effective until the specified period for notice elapses, as required by this subdivision. Notwithstanding any other provision, a violation of this subdivision by a landlord does not entitle a qualified commercial tenant to statutory penalties.

(c) If a state or federal statute, state or federal regulation, recorded regulatory agreement, or contract provides for a longer period of notice

regarding a rent increase than that provided in subdivision (a) or (b), the personal service or mailing of the notice shall be in accordance with the longer period.

SEC. 2.

Section 1632 of the Civil Code is amended to read:

1632.

(a) The Legislature hereby finds and declares all of the following:

(1) This section was enacted in 1976 to increase consumer information and protections for the state's sizeable and growing Spanish-speaking population.

(2) Since 1976, the state's population has become increasingly diverse and the number of Californians who speak languages other than English as their primary language at home has increased dramatically.

(3) According to data from the American Community Survey, which has replaced the decennial census for detailed socioeconomic information about United States residents, approximately 15.2 million Californians speak a language other than English at home, based on data from combined years 2009 through 2011. This compares to approximately 19.6 million people who speak only English at home. Among the Californians who speak a language other than English at home, approximately 8.4 million speak English very well, and another 3 million speak English well. The remaining 3.8 million Californians surveyed do not speak English well or do not speak English at all. Among this group, the five languages other than English that are most widely spoken at home are Spanish, Chinese, Tagalog, Vietnamese, and Korean. These five languages are spoken at home by approximately 3.5 million of the 3.8 million Californians with limited or no English proficiency, who speak a language other than English at home.

(b) A person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement, and any other person who will be signing the contract or agreement, and before the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, that includes a translation of every term and condition in that contract or agreement:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family, or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family, or household purposes in which the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.

(5) Notwithstanding paragraph (2), a reverse mortgage as described in Chapter 8 (commencing with Section 1923) of Title 4 of Part 4 of Division 3.

(6) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(7) A foreclosure consulting contract subject to Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3.

(8) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement covering a nonresidential-zoned commercial space.

(c) Notwithstanding subdivision (b), for a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the statement to the borrower required by Section 10240 of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

(d) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (b) is executed, notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be provided to the lessee or tenant.

(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, prior to the execution of the contract or agreement, shall also be deemed in compliance with the requirements of subdivision (b) with regard to the original contract or agreement.

(1) "Regulation M" and "Regulation Z" mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing

with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(2) As used in this section, "supervised financial organization" means a bank, savings association as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or a person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code.

(f) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (b) is executed, a notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be conspicuously displayed to the effect that the person described in subdivision (b) is required to provide a contract or agreement in the language in which the contract or agreement was negotiated, or a translation of the disclosures required by law in the language in which the contract or agreement was negotiated, as the case may be. If a person described in subdivision (b) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the language in which the contract or agreement was negotiated is used.

(g) (1) The term "contract" or "agreement," as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term "contract" or "agreement" does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

(2) The term "contract" or "agreement" does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer's obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if the home improvement contract or installation contract is otherwise a part of a contract described in subdivision (b).

(3) Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (b), including, but not limited to, rules and regulations governing a tenancy and inventories of furnishings to be provided by the person described in subdivision (b), are not included in the term "contract" or "agreement."

(h) (1) This section does not apply to a person engaged in a trade or business who negotiates primarily in a language other than English, as described by subdivision (b), if the party with whom that person is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating that party as a tenant, lessee, or sublessee, or similarly obligates the party by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through the party's own interpreter.

(2) As used in this subdivision, "the party's own interpreter" means a person who is not a minor and who is able to speak fluently and read with full understanding both the English language and any of the languages specified in subdivision (b) in which the contract, lease, or other obligation was negotiated, and who is not employed by, or whose service is not made available through, the person engaged in the trade or business.

(3) This subdivision does not apply to a contract or agreement described in paragraph (8) of subdivision (b).

(i) Notwithstanding subdivision (b), a translation may retain the following elements of the executed English-language contract or agreement without translation: names and titles of individuals and other persons, addresses, brand names, trade names, trademarks, registered service marks, full or abbreviated designations of the make and model of goods or services, alphanumeric codes, numerals, dollar amounts expressed in numerals, dates, and individual words or expressions having no generally accepted non-English translation. It is permissible, but not required, that this translation be signed.

(j) The terms of the contract or agreement that is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the contract or the disclosures required by subdivision (e) in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(k) (1) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. If the contract for a consumer credit sale or consumer lease that has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom the consumer made the contract and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded, and the assignor shall promptly repurchase the contract from the assignee.

(2) Notwithstanding paragraph (1), only a tenant may rescind a contract described in paragraph (8) of subdivision (b) pursuant to this subdivision.

SEC. 3.

Section 1946.1 of the Civil Code is amended to read:

1946.1.

(a) Notwithstanding Section 1946, a hiring of residential real property or commercial real property by a qualified commercial tenant for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of the party's intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling or commercial real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) Notwithstanding subdivision (b), an owner of a residential dwelling or commercial real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if a tenant or resident has resided in the dwelling or occupied the property for less than one year.

~~(d) Notwithstanding subdivision (b), an owner of commercial real property hired by a qualified commercial tenant giving notice pursuant to this section shall give notice at least 90 days prior to the proposed date of termination if a tenant has occupied the property for three or more years.~~

(e) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if all of the following apply:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.

(2) The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a title insurer or an underwritten title company, as defined in Sections 12340.4 and 12340.5 of the Insurance Code, respectively, a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.

(3) The purchaser is a natural person or persons.

(4) The notice is given no more than 120 days after the escrow has been established.

(5) Notice was not previously given to the tenant pursuant to this section.

(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(f) After an owner has given notice of the owner's intention to terminate the tenancy pursuant to this section, a tenant may also give notice of the owner's intention to terminate the tenancy pursuant to this section, provided that the tenant's notice is for a period at least as long as the term of the periodic tenancy and the proposed date of termination occurs before the owner's proposed date of termination.

(g) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(h) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

(i) A notice given by an owner pursuant to this section shall contain, in substantially the same form, the following:

"State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out."

(j) For the purposes of this section, the following definitions apply:

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

(2) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(3) "Nonprofit organization" means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986.

(4) "Qualified commercial tenant" means a tenant of commercial real property that is a microenterprise, a restaurant with fewer than 25~~10~~ employees, or a nonprofit organization with fewer than 50~~20~~ employees. ~~A qualified commercial tenant shall provide a landlord a self-attestation regarding the number of employees.~~ **A landlord shall provide notice of the rights created under subdivisions (b)-(d) of this Section when serving commercial tenants with a notice to terminate their tenancy. Before or upon execution of the lease, a qualified commercial tenant shall provide a landlord a notice that they are a qualified commercial tenant under the provisions of Civil Code Section 1946.1 and a self-attestation regarding the number of employees in order to be afforded the notice periods provided by subdivisions (b)-(d) of this section. For periodic or month-to-month leases, the qualified commercial tenant shall provide the landlord**

notice that they are a qualified commercial tenant under this Section, along with a self-attestation regarding their number of employees, and at such time as such required notice and attestation is provided, the protections under subdivision (b) shall take effect.

~~SEC. 4.~~

~~Section 1950.7 of the Civil Code is amended to read:~~

~~1950.7.~~

~~(a) A payment or deposit of money the primary function of which is to secure the performance of a rental agreement for other than residential property or any part of the agreement, other than a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement, shall be governed by the provisions of this section. With respect to residential property, the provisions of Section 1950.5 shall prevail.~~

~~(b) (1) A landlord shall not demand or receive a payment or deposit of money from a qualified commercial tenant, however denominated, in an amount or value in excess of an amount equal to one month's rent, in addition to rent for the first month paid on or before initial occupancy.~~

~~(2) This subdivision does not apply to a payment or deposit of money requested by a landlord before January 1, 2025.~~

~~(3) For the purposes of this subdivision, the following definitions apply:~~

~~(A) "Commercial real property" means all real property in this state, except dwelling units subject to this chapter, mobilehomes as defined in Section 798.3, and recreational vehicles as defined in Section 799.29.~~

~~(B) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.~~

~~(C) "Nonprofit organization" means any private, nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986.~~

~~(D) "Qualified commercial tenant" means a tenant of commercial real property that is a microenterprise, a restaurant with fewer than 25 employees, or a nonprofit organization with fewer than 50 employees. A qualified commercial tenant shall provide a landlord with a self-attestation regarding the number of employees.~~

~~(c) The payment or deposit of money shall be held by the landlord for the tenant who is party to the agreement. The claim of a tenant to the payment or deposit shall be prior to the claim of any creditor of the landlord, except a trustee in bankruptcy.~~

~~(d) The landlord may claim of the payment or deposit only those amounts as are reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises caused by the tenant, or to clean the~~

~~premises upon termination of the tenancy, if the payment or deposit is made for any or all of those specific purposes.~~

~~(1) If the claim of the landlord upon the payment or deposit is only for defaults in the payment of rent and the security deposit equals no more than one month's rent plus a deposit amount clearly described as the payment of the last month's rent, then any remaining portion of the payment or deposit shall be returned to the tenant at a time as may be mutually agreed upon by landlord and tenant, but in no event later than 30 days from the date the landlord receives possession of the premises.~~

~~(2) If the claim of the landlord upon the payment or deposit is only for defaults in the payment of rent and the security deposit exceeds the amount of one month's rent plus a deposit amount clearly described as the payment of the last month's rent, then any remaining portion of the payment or deposit in excess of an amount equal to one month's rent shall be returned to the tenant no later than two weeks after the date the landlord receives possession of the premises, with the remainder to be returned or accounted for within 30 days from the date the landlord receives possession of the premises.~~

~~(3) If the claim of the landlord upon the payment or deposit includes amounts reasonably necessary to repair damages to the premises caused by the tenant or to clean the premises, then any remaining portion of the payment or deposit shall be returned to the tenant at a time as may be mutually agreed upon by landlord and tenant, but in no event later than 30 days from the date the landlord receives possession of the premises.~~

~~(e) Upon termination of the landlord's interest in the unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the payment or deposit:~~

~~(1) Transfer the portion of the payment or deposit remaining after any lawful deductions made under subdivision (d) to the landlord's successor in interest, and thereafter notify the tenant by personal delivery or certified mail of the transfer, of any claims made against the payment or deposit, and of the transferee's name and address. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign the tenant's name on the landlord's copy of the notice.~~

~~(2) Return the portion of the payment or deposit remaining after any lawful deductions made under subdivision (d) to the tenant.~~

~~(f) Upon receipt of any portion of the payment or deposit under paragraph (1) of subdivision (e), the transferee shall have all of the rights and obligations of a landlord holding the payment or deposit with respect to the payment or deposit.~~

~~(g) The bad faith retention by a landlord or transferee of a payment or deposit or any portion thereof, in violation of this section, may subject the~~

~~landlord or the transferee to damages not to exceed two hundred dollars (\$200), in addition to any actual damages.~~

SEC. 54.

Section ~~1950.9~~ **1950.8** is added to ~~of~~ the Civil Code, **is amended** to read:

1950.9-1950.8

~~(a) A landlord may increase a qualified commercial tenant's rent to recover building operating costs only if all of the following apply:~~

(a) This section applies only to commercial leases and nonresidential tenancies of real property.

(b) It shall be unlawful for any person to require, demand, or cause to make payable any payment of money, including, but not limited to, "key money," however denominated, or the lessor's attorney's fees reasonably incurred in preparing the lease or rental agreement, as a condition of initiating, continuing, or renewing a lease or rental agreement, unless the amount of payment is stated in the written lease or rental agreement.

(c) Any person who requires, demands, or causes to make payable any payment in violation of subdivision (a), shall be subject to civil penalty of three times the amount of actual damages proximately suffered by the person seeking to obtain the lease or rental of real property, and the person so damaged shall be entitled to an award of costs, including reasonable attorney's fees, reasonable incurred in connection with obtaining the civil penalty.

(d) Nothing in this section shall prohibit the advance payment of rent, if the amount and character of the payment are clearly stated in a written lease or rental agreement.

(e) Nothing in this section shall prohibit any person from charging a reasonable amount for the purpose of conducting reasonable business activity in connection with initiating, continuing, or renewing a lease or rental agreement for nonresidential real property, including, but not limited to, verifying creditworthiness or qualifications of any person seeking to initiate, continue, or renew a lease or rental agreement for any use other than residential use, or cleaning fees, reasonably incurred in connection with the hiring of the real property.

(f)(1) Nothing in this section shall prohibit a person from increasing a tenant's rent for nonresidential real property in order to recover building operating costs incurred on behalf of the tenant, if the right to the rent, the method of calculating the increase, and the period of time covered by the increase is stated in the lease or rental agreement.

(2) Notwithstanding the above, Qualified Commercial Tenants may only be charged operating costs, also known as common area maintenance fees, if:

~~(A1) The costs are limited to maintenance, a repair by the landlord that is not required by the lease, landscaping, security, trash, disposal, or insurance. **or repairs that the landlord is not responsible for under the lease, landscaping, security, trash, disposal, or insurance.**~~

~~(B2) The costs were not paid by the tenant directly to a third party. **The costs do not include any expenses paid by the tenant directly to third parties, or as to which the landlord is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.**~~

~~(C3) A third party, a tenant, or insurance did not reimburse the landlord for the costs.~~

~~(C4) The costs are allocated proportionately per tenant, by square footage, or another method as substantiated through supporting documentation provided by the landlord to the tenant.~~

~~(D5) The landlord notifies the tenant of the costs, and the costs were incurred within 18 months of the notification. **The costs were incurred 18 months or less from when the Qualified Commercial Tenant is notified of such costs.**~~

~~(E6) The landlord provides the tenant supporting documentation proving that operating costs have been incurred, or are reasonably expected to be incurred within the next 12 months, as follows:~~

~~(iA) Thirty days before the rent increase if the rent increase is less than 10 percent of the rent charged within the 12-month period before the increase.~~

~~(iiB) Ninety days before the rent increase if the rent increase is 10 percent or more of the rent charged within the 12-month period before the increase. **"Supporting Documentation" proving these operating costs**~~

~~**have been incurred, or are reasonably expected to be incurred within the next 12 months, is provided to the Qualified Commercial Tenant, upon request by the qualified commercial tenant, 30 days before the tenant is required to pay for these costs and 90 days before the tenant is required to pay for these costs if the cost increase is 10 percent or more of the amount charged to the tenant for operating costs at any time during the 12 month period before the effective date of the increase. The Landlord shall notify qualified commercial tenant of their right to request supporting documentation.**~~

~~(b3) In an action for an unlawful detainer, ejectment, or other action to recover possession, a qualified commercial tenant may raise, as an affirmative defense, that the landlord violated this section. **A landlord's failure to comply with subdivision (f) may serve as an affirmative defense in an unlawful detainer, ejectment, or other action to recover possession based on the qualified commercial tenant's failure to pay operating cost charges.**~~

~~(c4)~~ A landlord who violates this section shall be subject to a civil penalty of three times the amount of actual damages proximately suffered by the qualified commercial tenant, and the qualified commercial tenant shall be entitled to an award of costs, including reasonable attorney's fees, reasonably incurred in connection with obtaining the civil penalty. **A Qualified Commercial Tenant may institute civil proceedings and seek remedies as outlined in subdivision (c) against a landlord violating any of the provisions of subdivision (f).**

~~(d5)~~ Any waiver of a right under this section by a qualified commercial tenant shall be void as a matter of public policy. **The rights under this section cannot be waived and any such waiver shall be deemed unenforceable.**

(e6) For the purposes of this section, the following definitions apply:

(1) "Microenterprise" has the same meaning as that term is defined in subdivision (a) of Section 18000 of the Business and Professions Code.

(2) "Nonprofit organization" means any private nonprofit organization that qualifies under Section 501(c)(3) of the United States Internal Revenue Code of 1986.

(3) "Qualified commercial tenant" means a tenant of commercial real property that is a microenterprise, a restaurant with fewer than ~~25~~**10** employees, or a nonprofit organization with fewer than ~~50~~**20** employees. A qualified commercial tenant shall provide a landlord **a notice that they are a qualified commercial tenant under the provisions of Civil Code Section 1950.8 and** with a self-attestation regarding the number of employees **prior to or at the execution of the lease. For periodic or month-to-month leases, the qualified commercial tenant shall provide the landlord notice that they are a qualified commercial tenant under this Section, along with a self-attestation regarding the number of employees, and at such time as such notice and attestation is provided, the protections under subdivision (b) shall take effect.**

(4) "Supporting documentation" means a dated and itemized quote, contract, receipt, or invoice from a licensed contractor or a provider of services that includes, but is not limited to, both of the following:

(A) A tabulation showing how the costs are allocated among tenants in compliance with paragraph ~~(4)~~**(2)** of subdivision (a**f**).

(B) A signed and dated attestation by the landlord that the documentation and costs are true and correct.