



April 21, 2021

The Honorable Lawrence J. Hogan, Jr.
Governor of the State of Maryland
State House
100 State Circle
Annapolis, MD 21401

Dear Governor Hogan,

The International Council of Shopping Centers (ICSC) has over 1,000 members in Maryland engaged in all aspects of the retail real estate industry. There are approximately 1,900 shopping centers in the state and in 2019 those outlets provided 485,800 jobs, \$100.7 billion in sales and generated \$6 billion in sales tax and \$261 million in state property tax. Last year, due to emergency closures and other COVID-related measures, our sector lost 69,400 jobs and \$2.2 billion in lost sales. We are hopeful that with the great strides made in vaccinations, the economy is stabilizing. ICSC is writing to urge your rejection of HB 719, an emergency bill passed by the legislature on April 12. HB 719, if enacted, makes a bargained-for provision in commercial contracts unenforceable under certain circumstances.

The legislation is intended to provide relief to commercial tenants impacted by government-mandated COVID closures, but as written sets a bad precedent for the state by treading into established contract law. There is no question that the implementation of important public safety measures and closures deeply impacted many businesses in Maryland. We believe the solution is more economic relief, not the approach taken by the legislature, which may be unconstitutional under U.S. Const., Article I §10 cl. 1 "No State shall...pass any...Law impairing the obligation of Contracts."

HB 719 prohibits enforcing a personal liability clause if the commercial tenant was required to cease certain on-site services or close to the public and the commercial tenant's default occurred between March 23, 2020, and September 30, 2020. The ban on bringing an action shall remain effective until a state of emergency and a catastrophic health emergency no longer exist, plus 180 days after that date. This lengthy time period seems incongruous with the window established for default, as mentioned above. Enactment of HB 719 signals that the state is willing to insert itself into contracts between private parties, which is an unenviable practice to adopt.

Fundamentally, the bill is a broad-brushed attempt to characterize all relationships of private parties in a commercial lease the same. Based on conversations over the past year with many ICSC members large and small, this one-size-fits-all approach, however well-intentioned, would be a mistake. Across the country, owner/developers, some small businesses themselves, have, more often than not, tried to reach some accommodation with tenants in the form of rent relief, rent deferrals, forgiveness, extended terms and other breaks, depending on the tenant's situation. Yet the legislation, in its attempt to help impacted commercial tenants, waives their contractual obligations, regardless of whether they have received assistance from their landlords, governmental aid or other support and without any assessment of financial hardship.

Another worrisome scenario to consider is one in which a guarantor chooses to legally disassociate themselves from the active business before the expiration of the legislation [anticipated 6 months after the end



of the State of Emergency], or a termination of a leaseholder's corporate entities during the state of emergency, in an attempt to avoid permanent responsibility. This is a lease loophole to be sorted out by the Courts that could undermine commercial real estate valuation within the state of Maryland. We do not believe the bill sponsors intended to permanently modify lease terms, and subsequently undermine other securities and contracts based upon those leases. Adoption of this legislation could put the investment in Maryland Commercial Real Estate at peril in comparison to investment in other states with more secure contract terms. Lending terms and real estate sales may become much more challenging in Maryland if there cannot be confidence in the security of underlying leases.

ICSC believes any governmental action to limit the enforcement of a personal guarantee could potentially jeopardize the willingness of commercial property owners to accept such guarantees moving forward. It is possible in the future that "mom and pop" shop owners may have to demonstrate capitalization or provide a line of credit from a recognized entity to cover future costs. Entrepreneurs may thus face additional financial barriers if a landlord were to refuse to accept personal guarantees. The Legislature, in its haste to act at the end of the session, may not have considered this real-world effect.

Lastly, HB 719 fails to take into account businesses that may have experienced a downturn during the period of closures in 2020 but have subsequently rebounded or, with the help of their landlords, pivoted to curbside pickup or drive-through. Even during the period of closures, many businesses, while unable to allow on-site consumption of food and beverages, were still able to provide delivery and takeout services to local customers. Further, the bill has no requirement that food or beverage service must have been the core business offering, such as in the case of a restaurant or bar. For example, a department store with a small coffee counter that only provided coffee "to go" would potentially qualify for non-enforcement of a personal liability clause under this bill.

We strongly support additional relief for businesses impacted by COVID-19 to help them get back on their feet. This is a far more prudent solution than enacting a potentially unconstitutional proposal that modifies existing contracts to benefit one category of businesses to the complete detriment of another.

ICSC respectfully encourages you to reject HB 719. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Betsy Laird". The signature is fluid and cursive, written in a professional style.

Betsy Laird
Senior Vice President
ICSC Global Public Policy