

Workers and Businesses at Risk

COVID-19 mandated closures have decimated the restaurant and bar industry. **California has more than 90,000 restaurant locations, generating more than \$7 billion in sales tax annually.** The vast majority of the state's restaurant locations are owned and operated by independent proprietors who live in the communities where they serve their customers. As California reopens in accordance with California's Roadmap to Pandemic Resilience, restaurants, bars, and entertainment venues are facing ongoing social distancing requirements or closures for the foreseeable future, with most anticipating an operating loss for the rest of the year. **Leases, while classically thought of as an asset, are in fact, and especially in this situation – significant liabilities.** This is because a lease is usually a fixed cost that cannot be reduced in the classic variable cost sense.

Support is Needed

Even under the current circumstances of a global pandemic, if a landlord is unwilling to augment rent payments or agree to terminate a lease, many businesses have little or no legal recourse. Some landlords pressuring businesses to reopen prematurely, apply for loans or more to pay them. Without legislation to address this issue, there will be widespread litigation and bankruptcies. **According to the California Restaurant Association, 30% of restaurants in California will not survive without bold measures of relief.** Ongoing closures or social distancing requirements leave businesses with little or no revenue, compromising their ability to pay their monthly lease payments. Restaurants, bars, and entertainment venues need to be able to negotiate lease reductions and/or repayment amortization amid the change in business due to the state and local restrictions. The significant cost investment involved in building out a restaurant, bar, or entertainment venue is in the hundreds of thousands of dollars, and is the livelihood of those involved, so deciding to close is always a decision of last resort.

Amendments to SB939

Many restaurants will be forced to default on their leases due to the shelter in place (SIP), post SIP regulations, and high pre-COVID -19 rental rates, and third parties guarantee many of these leases. Third-party guarantees cannot be abrogated in bankruptcy. Without a mechanism to encourage lease renegotiations there will be a significant increase in litigation between landlords, tenants, and third-party guarantors, bankruptcies, and subsequently increases in vacant storefronts. All of this will have a negative impact on all aspects of our communities. The Legislature can change this by supporting SB939 which accomplishes the following:

- **Allows restaurants, bars, and entertainment venues with a decline in revenue of 40% from pre-COVID shelter in place and face an ongoing reduction of capacity of at least 25%, to engage in good faith negotiations with their landlord to modify any rent or economic requirement regardless of the term remaining on the lease.**
- **Should the tenant and landlord not be able to reach a mutually satisfactory agreement, the tenant shall have the option to terminate the lease not be liable for more than three months of past or future rent accumulated during SIP. Any third party guarantees will expire with the lease termination.**
- **It creates a one-time renegotiation, as the tenant will not have the option to terminate its lease at a later date under the provisions of this bill.**
- **It is temporary, expiring on December 31, 2021, or two months after the end of the declared state of emergency, whichever is later.**
- **Would not apply to any publicly-traded company or a company that is owned by or is affiliated with a publicly-traded company.**