

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 25-1004

BY REPRESENTATIVE(S) Woodrow and Mabrey, Bacon, Boesenecker, Brown, English, Feret, Froelich, Garcia, Jackson, Joseph, Lieder, Lindsay, Lindstedt, Ricks, Rutinel, Sirota, Story, Titone, Velasco, Willford, Zokaie, McCluskie, Paschal;
also SENATOR(S) Gonzales J. and Hinrichsen, Cutter, Danielson, Exum, Jodeh, Kipp, Michaelson Jenet, Sullivan, Wallace, Weissman, Winter F., Coleman.

CONCERNING PRICING COORDINATION BY LANDLORDS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Agreements or conspiracies between competitors to fix prices or other commercial terms are illegal under current Colorado law, and algorithmic devices have made illegal agreements more challenging to detect; and

(b) In recent years, several lawsuits have been filed alleging that the use of algorithmic devices by landlords to set prices and other commercial

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

terms in the residential housing market results in higher rents and constrained housing supply for residential tenants; and

(c) A recent White House study titled "The Cost of Anticompetitive Pricing Algorithms in Rental Housing" estimated that in 2023, the cost to renters of anticompetitive pricing was \$3.8 billion, and the cost to renters in the Denver metro area was the second highest of any metro area in the country.

(2) Therefore, the general assembly declares that, with certain exceptions, the distribution and use of an algorithmic device by a service provider or landlord to set rents and other certain commercial terms regarding the occupancy of rental housing is prohibited.

SECTION 2. In Colorado Revised Statutes, **add** 38-12-703 as follows:

38-12-703. Determination of rent amount - sale, distribution, and use of algorithmic devices prohibited - illegal restraint of trade or commerce - definitions. (1) (a) THE SALE OR DISTRIBUTION FOR CONSIDERATION OF AN ALGORITHMIC DEVICE IS PROHIBITED IF:

(I) THE ALGORITHMIC DEVICE IS SOLD OR DISTRIBUTED WITH THE INTENT THAT IT WILL BE USED BY TWO OR MORE LANDLORDS IN THE SAME MARKET OR A RELATED MARKET TO SET OR RECOMMEND THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES; AND

(II) THE DEVICE SETS OR RECOMMENDS THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES BASED ON DATA OR A FORMULA THAT IS SIMILAR FOR EACH LANDLORD.

(b) THE USE OF AN ALGORITHMIC DEVICE BY A PERSON TO SET OR RECOMMEND THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES IS PROHIBITED IF:

(I) THE PERSON KNEW OR SHOULD HAVE KNOWN THAT ANOTHER PERSON USED THE ALGORITHMIC DEVICE TO SET OR RECOMMEND THE

AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES; AND

(II) THE CIRCUMSTANCES SUGGEST THAT THE PERSON ADHERED TO OR PARTICIPATED IN A SCHEME TO FIX THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES.

(c) A PERSON ENGAGED IN THE BUSINESS OF PROVIDING ALGORITHMIC DEVICE SERVICES OR PRODUCTS THAT ARE USED TO SET OR RECOMMEND THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES SHALL NOT USE NONPUBLIC COMPETITOR DATA PERTAINING TO RESIDENTIAL PROPERTIES IN COLORADO IN SETTING OR RECOMMENDING THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES FOR RESIDENTIAL PROPERTIES IN COLORADO.

(2) A VIOLATION OF SUBSECTION (1) OF THIS SECTION IS AN ILLEGAL RESTRAINT OF TRADE OR COMMERCE IN VIOLATION OF SECTION 6-4-104 AND IS PUNISHABLE IN ACCORDANCE WITH THE "COLORADO STATE ANTITRUST ACT OF 2023", ARTICLE 4 OF TITLE 6.

(3) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, A PERSON THAT PROVIDES AN ESTIMATED AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES DOES NOT USE AN ALGORITHMIC DEVICE TO SET OR RECOMMEND THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES AS PROHIBITED BY SUBSECTION (1)(b) OF THIS SECTION SO LONG AS THE PERSON:

(a) DEVELOPS THE ESTIMATE USING PUBLICLY AVAILABLE DATA; AND

(b) MAKES THE ESTIMATE AVAILABLE TO THE PUBLIC AT NO COST.

(4) EXCEPT AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT OR IMPAIR THE APPLICABILITY OF ANY STATE OR FEDERAL ANTITRUST LAW. THE PROHIBITIONS DESCRIBED IN SUBSECTION (1) OF THIS SECTION APPLY IN ADDITION TO, AND NOT IN LIEU

OF, ANY PROHIBITIONS DESCRIBED IN APPLICABLE STATE OR FEDERAL ANTITRUST LAWS.

(5) AS USED IN THIS SECTION:

(a) "ALGORITHMIC DEVICE" MEANS A DEVICE THAT USES ONE OR MORE ALGORITHMS TO PERFORM CALCULATIONS OF DATA, INCLUDING DATA CONCERNING LOCAL OR STATEWIDE RENT AMOUNTS BEING CHARGED TO TENANTS BY LANDLORDS, FOR THE PURPOSE OF ADVISING A LANDLORD CONCERNING THE AMOUNT OF RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH RENTAL HOUSING. "ALGORITHMIC DEVICE":

(I) INCLUDES A PRODUCT THAT INCORPORATES AN ALGORITHMIC DEVICE; AND

(II) DOES NOT INCLUDE:

(A) A PRODUCT THAT PROVIDES INFORMATION TO THE PUBLIC AND NOT FOR THE PURPOSE OF RECOMMENDING OR SETTING A COMMERCIAL TERM BY TWO OR MORE PERSONS IN THE SAME MARKET OR A RELATED MARKET, SO LONG AS THE INFORMATION WAS NOT TRAINED USING NONPUBLIC COMPETITOR DATA;

(B) A PRODUCT USED FOR THE PURPOSE OF ESTABLISHING RENT OR INCOME LIMITS IN ACCORDANCE WITH THE AFFORDABLE HOUSING PROGRAM GUIDELINES OF THE STATE, THE FEDERAL GOVERNMENT, A LOCAL GOVERNMENT, OR OTHER POLITICAL SUBDIVISION; OR

(C) A MULTIPLE LISTING SERVICE.

(b) "MULTIPLE LISTING SERVICE" MEANS A SERVICE AVAILABLE ON EQUAL TERMS TO SUBSCRIBERS THAT LISTS PROPERTIES FOR RENT OR SALE BUT DOES NOT SET, RECOMMEND, OR PROVIDE NONPUBLIC COMPETITOR DATA ABOUT THE RENT, LEVEL OF OCCUPANCY, OR OTHER COMMERCIAL TERM ASSOCIATED WITH THE OCCUPANCY OF A RESIDENTIAL PREMISES.

(c) "NONPUBLIC COMPETITOR DATA" MEANS NONPUBLIC DATA, INCLUDING INFORMATION ABOUT ACTUAL RENT PRICES, OCCUPANCY RATES, LEASE START AND END DATES, AND SIMILAR DATA, REGARDLESS OF

WHETHER THE DATA ARE ATTRIBUTABLE TO A SPECIFIC COMPETITOR OR ANONYMIZED, THAT ARE DERIVED FROM OR OTHERWISE PROVIDED BY A PERSON THAT COMPETES IN THE SAME MARKET, OR IN A RELATED MARKET, AS ANOTHER PERSON.

(d) "NONPUBLIC DATA" MEANS INFORMATION THAT IS NOT WIDELY AVAILABLE OR EASILY ACCESSIBLE TO THE PUBLIC, INCLUDING PUBLIC-FACING DATA MADE AVAILABLE UNDER TERMS OF SERVICE THAT PROHIBIT THE USE OF THAT DATA.

(e) "RENT" MEANS THE TOTAL AMOUNT OF RENT, INCLUDING CONCESSIONS AND FEES, THAT A RESIDENTIAL TENANT IS REQUIRED TO PAY PURSUANT TO A RENTAL AGREEMENT.

SECTION 3. In Colorado Revised Statutes, **add** 6-4-123 as follows:

6-4-123. Pleading standards. A PLAINTIFF PLAUSIBLY PLEADS A VIOLATION OF SECTION 6-4-104 IF THE COMPLAINT CONTAINS FACTUAL ALLEGATIONS DEMONSTRATING THAT THE EXISTENCE OF A CONTRACT, COMBINATION IN THE FORM OF TRUST OR OTHERWISE, OR CONSPIRACY IN RESTRAINT OF TRADE OR COMMERCE IS AMONG THE REALM OF PLAUSIBLE POSSIBILITIES. A PLAINTIFF NEED NOT ALLEGE FACTS TENDING TO EXCLUDE THE POSSIBILITY OF INDEPENDENT ACTION.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO