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HOUSE BILL 19-1106

BY REPRESENTATIVE(S) Titone and Gonzales-Gutierrez, Benavidez, Buckner, Coleman, Duran, Galindo, Herod, Jackson, Jaquez Lewis, Kennedy, Lontine, McLachlan, Singer, Sirota, Valdez A., Weissman, Bird, Buentello, Caraveo, Cutter, Exum, Froelich, Hooton, Kraft-Tharp, Melton, Michaelson Jenet, Snyder, Sullivan, Tipper, Becker, Roberts; also SENATOR(S) Pettersen, Bridges, Danielson, Donovan, Fenberg, Fields, Ginal, Gonzales, Moreno, Rodriguez, Story, Todd, Williams A., Winter, Zenzinger, Garcia.

CONCERNING THE RENTAL APPLICATION PROCESS FOR PROSPECTIVE TENANTS.

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

SECTION 1. In Colorado Revised Statutes, **add** part 9 to article 12 of title 38 as follows:

PART 9
RENTAL APPLICATION FAIRNESS ACT

38-12-901. Short title. THE SHORT TITLE OF THIS PART 9 IS THE "RENTAL APPLICATION FAIRNESS ACT".

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.

38-12-902. Definitions. AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DWELLING UNIT" MEANS A STRUCTURE OR THE PART OF A STRUCTURE THAT IS USED AS A HOME, RESIDENCE, OR SLEEPING PLACE.

(2) "LANDLORD" MEANS THE OWNER, MANAGER, LESSOR, OR SUBLESSOR OF A DWELLING UNIT.

(3) "RENTAL AGREEMENT" MEANS ANY AGREEMENT, WRITTEN OR ORAL, BETWEEN A LANDLORD AND A TENANT EMBODYING THE TERMS AND CONDITIONS CONCERNING THE USE AND OCCUPANCY OF A DWELLING UNIT.

(4) "RENTAL APPLICATION" MEANS ANY INFORMATION, WRITTEN OR ORAL, SUBMITTED TO A LANDLORD BY A PROSPECTIVE TENANT FOR THE PURPOSE OF ENTERING INTO A RENTAL AGREEMENT.

(5) "RENTAL APPLICATION FEE" MEANS ANY SUM OF MONEY, HOWEVER DENOMINATED, THAT IS CHARGED OR ACCEPTED BY A LANDLORD FROM A PROSPECTIVE TENANT IN CONNECTION WITH THE PROSPECTIVE TENANT'S SUBMISSION OF A RENTAL APPLICATION OR ANY NONREFUNDABLE FEE THAT PRECEDES THE ONSET OF TENANCY. "RENTAL APPLICATION FEE" DOES NOT INCLUDE A REFUNDABLE SECURITY DEPOSIT OR ANY RENT THAT IS PAID BEFORE THE ONSET OF TENANCY.

(6) "TENANT" MEANS A PERSON ENTITLED UNDER A RENTAL AGREEMENT TO OCCUPY A DWELLING UNIT TO THE EXCLUSION OF OTHERS.

38-12-903. Rental application fee - limitations. (1) A LANDLORD SHALL NOT CHARGE A PROSPECTIVE TENANT A RENTAL APPLICATION FEE UNLESS THE LANDLORD USES THE ENTIRE AMOUNT OF THE FEE TO COVER THE LANDLORD'S COSTS IN PROCESSING THE RENTAL APPLICATION. THE LANDLORD'S COSTS MAY BE BASED ON:

(a) THE ACTUAL EXPENSE THE LANDLORD INCURS IN PROCESSING THE RENTAL APPLICATION; OR

(b) THE AVERAGE EXPENSE THE LANDLORD INCURS PER PROSPECTIVE TENANT IN THE COURSE OF PROCESSING MULTIPLE RENTAL APPLICATIONS.

(2) A LANDLORD SHALL NOT CHARGE A PROSPECTIVE TENANT A RENTAL APPLICATION FEE THAT IS IN A DIFFERENT AMOUNT THAN A RENTAL APPLICATION FEE CHARGED TO ANOTHER PROSPECTIVE TENANT WHO APPLIES TO RENT:

(a) THE SAME DWELLING UNIT; OR

(b) IF THE LANDLORD OFFERS MORE THAN ONE DWELLING UNIT FOR RENT AT THE SAME TIME, ANY OTHER DWELLING UNIT OFFERED BY THE LANDLORD.

(3) (a) A LANDLORD SHALL PROVIDE TO ANY PROSPECTIVE TENANT WHO HAS PAID A RENTAL APPLICATION FEE EITHER A DISCLOSURE OF THE LANDLORD'S ANTICIPATED EXPENSES FOR WHICH THE FEE WILL BE USED OR AN ITEMIZATION OF THE LANDLORD'S ACTUAL EXPENSES INCURRED. IF A LANDLORD CHARGES AN AMOUNT BASED ON THE AVERAGE COST OF PROCESSING THE RENTAL APPLICATION, THE LANDLORD SHALL INCLUDE INFORMATION REGARDING HOW THAT AVERAGE RENTAL APPLICATION FEE IS DETERMINED.

(b) A LANDLORD SHALL PROVIDE EVERY PROSPECTIVE TENANT WITH A RECEIPT FOR ANY APPLICATION FEE RECEIVED. THE LANDLORD MAY PROVIDE A PROSPECTIVE TENANT AN ELECTRONIC RECEIPT UNLESS THE PROSPECTIVE TENANT REQUESTS A PAPER RECEIPT, IN WHICH CASE THE LANDLORD SHALL PROVIDE THE PROSPECTIVE TENANT A PAPER RECEIPT.

(4) A LANDLORD WHO RECEIVES A RENTAL APPLICATION FEE FROM A PROSPECTIVE TENANT AND DOES NOT USE THE ENTIRE AMOUNT OF THE FEE TO COVER THE LANDLORD'S COSTS IN PROCESSING THE RENTAL APPLICATION SHALL REMIT TO THE PROSPECTIVE TENANT THE REMAINING AMOUNT OF THE FEE. THE LANDLORD SHALL MAKE A GOOD-FAITH EFFORT TO REMIT SUCH AMOUNT WITHIN TWENTY CALENDAR DAYS AFTER PROCESSING THE APPLICATION.

38-12-904. Consideration of rental applications - limitations - denial notice. (1) (a) IF A LANDLORD USES RENTAL HISTORY OR CREDIT HISTORY AS CRITERIA IN CONSIDERATION OF AN APPLICATION, THE LANDLORD SHALL NOT CONSIDER ANY RENTAL HISTORY OR CREDIT HISTORY BEYOND SEVEN YEARS IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION.

(b) IF A LANDLORD USES CRIMINAL HISTORY AS A CRITERION IN CONSIDERATION OF AN APPLICATION, THE LANDLORD SHALL NOT CONSIDER AN ARREST RECORD OF A PROSPECTIVE TENANT FROM ANY TIME OR ANY CONVICTION OF A PROSPECTIVE TENANT THAT OCCURRED MORE THAN FIVE YEARS BEFORE THE DATE OF THE APPLICATION; EXCEPT THAT A LANDLORD MAY CONSIDER ANY CRIMINAL CONVICTION RECORD OR DEFERRED JUDGMENT RELATING TO:

(I) THE UNLAWFUL DISTRIBUTION, MANUFACTURING, DISPENSING, OR SALE OF A MATERIAL, COMPOUND, MIXTURE, OR PREPARATION THAT CONTAINS METHAMPHETAMINE, AS DESCRIBED IN SECTION 18-18-405;

(II) THE UNLAWFUL POSSESSION OF MATERIALS TO MAKE METHAMPHETAMINE AND AMPHETAMINE, AS DESCRIBED IN SECTION 18-18-412.5;

(III) ANY OFFENSE THAT REQUIRED THE PROSPECTIVE TENANT TO REGISTER AS A SEX OFFENDER PURSUANT TO SECTION 16-22-103; OR

(IV) ANY OFFENSE DESCRIBED IN PART 1 OR PART 6 OF ARTICLE 3 OF TITLE 18.

(2) (a) IF A LANDLORD DENIES A RENTAL APPLICATION, THE LANDLORD SHALL PROVIDE THE PROSPECTIVE TENANT A WRITTEN NOTICE OF THE DENIAL THAT STATES THE REASONS FOR THE DENIAL. IF THE SPECIFIC SCREENING CRITERIA CANNOT BE DIRECTLY CITED BECAUSE OF THE USE OF A PROPRIETARY SCREENING SYSTEM, THE LANDLORD SHALL INSTEAD PROVIDE THE PROSPECTIVE TENANT WITH A COPY OF THE REPORT FROM THE SCREENING COMPANY THAT USES THE PROPRIETARY SCREENING SYSTEM. A LANDLORD MAY PROVIDE A PROSPECTIVE TENANT AN ELECTRONIC VERSION OF THE DENIAL NOTICE REQUIRED IN THIS SUBSECTION (2) UNLESS THE PROSPECTIVE TENANT REQUESTS A PAPER DENIAL NOTICE, IN WHICH CASE THE LANDLORD SHALL PROVIDE THE PROSPECTIVE TENANT A PAPER DENIAL NOTICE.

(b) A LANDLORD WHO IS REQUIRED TO PROVIDE A NOTICE OF DENIAL TO A PROSPECTIVE TENANT AS DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION SHALL MAKE A GOOD-FAITH EFFORT TO DO SO NOT MORE THAN TWENTY CALENDAR DAYS AFTER MAKING THE DECISION TO DENY THE PROSPECTIVE TENANT'S RENTAL APPLICATION.

38-12-905. Violations - liability - notice required - exception.

(1) EXCEPT AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, A LANDLORD WHO VIOLATES ANY PROVISION OF THIS PART 9 IS LIABLE TO THE PERSON WHO IS CHARGED A RENTAL APPLICATION FEE FOR TREBLE THE AMOUNT OF THE RENTAL APPLICATION FEE, PLUS COURT COSTS AND REASONABLE ATTORNEY FEES.

(2) A PERSON WHO INTENDS TO FILE AN ACTION PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOTIFY THE LANDLORD OF SUCH INTENTION NOT LESS THAN SEVEN CALENDAR DAYS BEFORE FILING THE ACTION.

(3) A LANDLORD WHO CORRECTS OR CURES A VIOLATION OF THIS PART 9 NOT MORE THAN SEVEN CALENDAR DAYS AFTER RECEIVING NOTICE OF THE VIOLATION IS NOT LIABLE FOR DAMAGES AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(4) A PERSON WHO PURPOSEFULLY AND IN BAD FAITH BRINGS A MERITLESS CLAIM AGAINST A LANDLORD UNDER THIS PART 9 IS LIABLE FOR THE LANDLORD'S COURT COSTS AND REASONABLE ATTORNEY FEES IN DEFENDING THE CLAIM.

SECTION 2. 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 (August 2, 2019, if adjournment sine die is on May 3, 2019); 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 2020 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 rental applications submitted on or after the applicable effective date of this act.

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO