

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0446.01 Richard Sweetman x4333

HOUSE BILL 23-1095

HOUSE SPONSORSHIP

Woodrow and Lindsay,

SENATE SPONSORSHIP

Hinrichsen,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING THE INCLUSION OF CERTAIN PROVISIONS IN**
102 **WRITTEN RENTAL AGREEMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law prohibits a written rental agreement from including:

- An unreasonable liquidated damages clause that assigns a cost to a party stemming from an eviction notice or an eviction action for a violation of the rental agreement; or
- A one-way, fee-shifting clause that awards attorney fees and court costs only to one party. Any fee-shifting clause

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
Amended 2nd Reading
February 24, 2023

in a rental agreement must award attorney fees to the prevailing party in a court dispute.

The bill amends these prohibitions so that:

- A written rental agreement must not include any clause that assigns a penalty to a party stemming from an eviction notice or an eviction action that results from a violation of the rental agreement; and
- Any fee-shifting clause in a rental agreement must award attorney fees to the prevailing party only following a determination that the party prevailed and the fee is reasonable.

The bill also prohibits a written rental agreement from including:

- A waiver of the right to a jury trial; the ability to pursue, bring, join, litigate, or support certain class or collective claims or actions; the implied covenant of good faith and fair dealing; or the implied covenant of quiet enjoyment;
- A provision that purports to affix any fee, damages, or penalty for a tenant's failure to provide notice of nonrenewal of a rental agreement prior to the end of the rental agreement;
- A provision that characterizes any amount or fee set forth in the rental agreement, with the sole exception of the set monthly payment for occupancy of the premises, as "rent" for which all remedies to collect rent, including eviction, are available; or
- A provision that requires a tenant to pay a fee in excess of the amount the landlord paid for a service for which the landlord is billed by a third party or that purports to recoup costs incurred by the landlord in processing any such services or billing.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-12-801, **amend**
3 (3); and **add** (4), (5), and (6) as follows:

4 **38-12-801. Written rental agreement - prohibited clauses -**
5 **copy - tenant - applicability - definitions.** (3) (a) A written rental
6 agreement must not include:

7 (a) (I) ~~An unreasonable liquidated damages~~ A clause that assigns
8 a ~~cost~~ PENALTY to a party stemming from an eviction notice or an eviction

1 action THAT RESULTS from a violation of the rental agreement; or
2 (b) (II) A one-way, fee-shifting clause that awards attorney fees
3 and court costs only to one party. Any fee-shifting clause contained in a
4 rental agreement must award attorney fees to the prevailing party in a
5 court dispute concerning the rental agreement, residential premises, or
6 dwelling unit FOLLOWING A DETERMINATION BY THE COURT THAT THE
7 PARTY PREVAILED AND THAT THE FEE IS REASONABLE.

8 (III) A WAIVER OF:

9 (A) THE RIGHT TO A JURY TRIAL, EXCEPT THAT THE PARTIES MAY
10 AGREE TO A WAIVER OF A JURY TRIAL IN A HEARING TO DETERMINE
11 POSSESSION OF A DWELLING UNIT;

12 (B) THE ABILITY TO PURSUE, BRING, JOIN, LITIGATE, OR SUPPORT
13 ANY KIND OF JOINT, CLASS, OR COLLECTIVE CLAIM OR ACTION ARISING
14 FROM OR RELATING TO THE TERM OF THE TENANCY;

15 (C) THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
16 OR

17 (D) THE IMPLIED COVENANT OF QUIET ENJOYMENT; EXCEPT THAT,
18 A WRITTEN RENTAL AGREEMENT MAY PROVIDE THAT THE LANDLORD IS
19 NOT RESPONSIBLE FOR ANY VIOLATION OF THE IMPLIED COVENANT OF
20 QUIET ENJOYMENT THAT IS COMMITTED BY A THIRD PARTY ACTING
21 BEYOND THE REASONABLE CONTROL OF THE LANDLORD;

22 (IV) A PROVISION THAT PURPORTS TO AFFIX ANY FEE, DAMAGES,
23 OR PENALTY FOR A TENANT'S FAILURE TO PROVIDE NOTICE OF
24 NONRENEWAL OF A RENTAL AGREEMENT PRIOR TO THE END OF THE
25 RENTAL AGREEMENT, EXCEPT FOR ACTUAL LOSSES INCURRED BY THE
26 LANDLORD AS A RESULT OF THE TENANT'S FAILURE TO PROVIDE ANY SUCH
27 NOTICE REQUIRED PURSUANT TO THE RENTAL AGREEMENT;

1 (V) A PROVISION THAT CHARACTERIZES ANY AMOUNT OR FEE SET
2 FORTH IN THE RENTAL AGREEMENT, WITH THE SOLE EXCEPTION OF THE SET
3 MONTHLY PAYMENT FOR OCCUPANCY OF THE PREMISES, AS "RENT" FOR
4 WHICH ALL REMEDIES TO COLLECT RENT, INCLUDING EVICTION, ARE
5 AVAILABLE. SUCH AMOUNTS AND FEES INCLUDE ANY FEES FOR UTILITIES
6 OR SERVICES AND ANY OTHER CHARGE THAT IS NOT RENT.

7 (VI) A PROVISION THAT REQUIRES A TENANT TO PAY A FEE
8 MARKUP OR FOR A SERVICE FOR WHICH THE LANDLORD IS BILLED BY A
9 THIRD PARTY, EXCEPT THAT A WRITTEN RENTAL AGREEMENT MAY
10 INCLUDE A PROVISION THAT REQUIRES A TENANT TO PAY EITHER A
11 MARKUP OR FEE IN AN AMOUNT THAT DOES NOT EXCEED TWO PERCENT OF
12 THE AMOUNT THAT THE LANDLORD WAS BILLED OR A MARKUP OR FEE IN
13 AN AMOUNT THAT DOES NOT EXCEED A TOTAL OF TEN DOLLARS PER
14 MONTH, BUT NOT BOTH. THIS SUBSECTION (3)(a)(VI) DOES NOT PRECLUDE
15 A PREVAILING PARTY FROM RECOVERING AN AMOUNT EQUAL TO ANY
16 REASONABLE ATTORNEY FEES AWARDED BY A COURT PURSUANT TO
17 SUBSECTION (3)(a)(II) OF THIS SECTION.

18 (VII) A PROVISION THAT PURPORTS TO ALLOW A PROVIDER
19 OPERATING UNDER ANY LOCAL, STATE, OR FEDERAL VOUCHER OR SUBSIDY
20 PROGRAM TO COMMENCE OR PURSUE AN ACTION FOR POSSESSION BASED
21 SOLELY ON THE NONPAYMENT OF UTILITIES.

22 (e) (b) Any ~~clause~~ PROVISION THAT IS INCLUDED IN A WRITTEN
23 RENTAL AGREEMENT IN VIOLATION OF SUBSECTION (3)(a) ~~OR (3)(b)~~ OF THIS
24 SECTION IS ~~null and~~ VOID AND UNENFORCEABLE.

25 (4) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
26 CONTRARY, WITH THE EXCEPTION OF SUBSECTIONS (3)(a)(I), (3)(a)(II),
27 AND (3)(a)(III)(B) OF THIS SECTION, THIS SECTION DOES NOT APPLY TO A

1 RENTAL AGREEMENT CONCERNING THE OCCUPANCY OF A MOBILE HOME,
2 AS DEFINED IN SECTION 38-12-201.5 (5), IN A MOBILE HOME PARK, AS
3 DEFINED IN SECTION 38-12-201.5 (6).

4 (5) NOTHING IN THIS SECTION EXCLUDES UTILITIES FROM BEING
5 CONSIDERED AS RENT FOR THE PURPOSE OF CALCULATING HOUSING COSTS
6 THAT ARE ELIGIBLE FOR REIMBURSEMENT OR PAYMENT UNDER ANY
7 LOCAL, STATE, OR FEDERAL VOUCHER OR SUBSIDY PROGRAM.

8 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
9 REQUIRES:

10 (a) "DWELLING UNIT" HAS THE MEANING SET FORTH IN SECTION
11 38-12-502 (3).

12 (b) "RENT" MEANS ANY MONEY OR OTHER CONSIDERATION TO BE
13 PAID TO A LANDLORD FOR THE RIGHT TO USE, POSSESS, AND OCCUPY A
14 DWELLING UNIT.

15 (c) "RENTAL AGREEMENT" HAS THE MEANING SET FORTH IN
16 SECTION 38-12-902 (3).

17 (d) "RESIDENTIAL PREMISES" HAS THE MEANING SET FORTH IN
18 SECTION 38-12-1202 (5).

19 (7) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
20 CONTRARY, SUBSECTIONS (3)(a)(III), (3)(a)(IV), (3)(a)(V), (3)(a)(VI),
21 AND (3)(a)(VII) OF THIS SECTION DO NOT APPLY TO A DUPLEX OR TRIPLEX
22 OR TO AN ACCESSORY DWELLING UNIT OF A RESIDENTIAL PREMISES IF THE
23 LANDLORD LIVES IN ONE OF THE UNITS OF THE DUPLEX OR TRIPLEX OR THE
24 LANDLORD LIVES IN THE RESIDENTIAL PREMISES THAT HAS THE
25 ACCESSORY DWELLING UNIT.

26 **SECTION 2. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following

1 the expiration of the ninety-day period after final adjournment of the
2 general assembly; except that, if a referendum petition is filed pursuant
3 to section 1 (3) of article V of the state constitution against this act or an
4 item, section, or part of this act within such period, then the act, item,
5 section, or part will not take effect unless approved by the people at the
6 general election to be held in November 2024 and, in such case, will take
7 effect on the date of the official declaration of the vote thereon by the
8 governor.

9 (2) This act applies to written rental agreements executed on or
10 after the applicable effective date of this act.