

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0262.01 Richard Sweetman x4333

HOUSE BILL 20-1141

HOUSE SPONSORSHIP

Caraveo and Gonzales-Gutierrez,

SENATE SPONSORSHIP

Gonzales,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING RESTRICTIONS ON THE FEES CHARGED BY LANDLORDS.

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>.)

The bill prohibits a landlord of a mobile home park or a residential premises (landlord) from:

- ! Charging a tenant or mobile home owner a late fee for late payment of rent unless the rent payment is late by at least 14 calendar days;
- ! Charging a tenant or mobile home owner a late fee in an amount that exceeds the greater of:
 - ! \$20; or

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

- ! The lesser of 3% of the tenant's or home owner's monthly rent obligation or 3% of the amount of the rent obligation that remains due;
- ! Removing, excluding, or initiating eviction procedures against a tenant or mobile home owner solely as a result of the tenant's or mobile home owner's failure to pay late fees;
- ! Imposing a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, rather than the tenant, is responsible for paying;
- ! Imposing a late fee more than once for each late payment;
- ! Requiring a tenant or mobile home owner to pay interest on late fees; or
- ! Recouping any amount of a late fee from a rent payment made by a tenant or mobile home owner.

A landlord may recoup one or more late fees from a tenant or mobile home owner's security deposit if the payment of each late fee is no more than 180 days overdue and the landlord provides written notice to the tenant or mobile home owner that the landlord has recouped each late fee from the tenant or mobile home owner's security deposit.

A landlord shall not require a tenant or mobile home owner to pay any fee or other charge other than the rent; except that a landlord may require a tenant or mobile home owner to pay a use-based fee that is described in the rental agreement.

If a landlord provides to a tenant or mobile home owner a utility service that is not individually metered, the landlord shall include the cost of the utility service in the tenant's or mobile home owner's rent and charge the actual cost of the utility service on a uniform basis to all tenants or mobile home owners who receive the service.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 38-12-101 as
 3 follows:

4 **38-12-101. Legislative declaration.** ~~The provisions of This part~~
 5 1 shall be liberally construed to implement the intent of the general
 6 assembly to ~~insure~~ ENSURE the proper administration of security deposits
 7 AND LATE FEES and protect the interests of tenants, MOBILE HOME
 8 OWNERS, and landlords.

1 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-12-102 as
2 follows:

3 **38-12-102. Definitions.** As used in this part 1, unless the context
4 otherwise requires:

5 (1) "HOME OWNER" HAS THE MEANING SET FORTH IN SECTION
6 38-12-201.5 (1).

7 (2) "LANDLORD" MEANS A LANDLORD, AS DEFINED IN SECTION
8 38-12-502 (5), OR THE MANAGEMENT OR LANDLORD OF A MOBILE HOME
9 PARK, AS DEFINED IN SECTION 38-12-201.5 (1.5) AND (3), RESPECTIVELY.

10 (3) "LATE FEE" MEANS A MONETARY SUM THAT A LANDLORD
11 CHARGES A TENANT AS A RESULT OF THE TENANT'S FAILURE TO TIMELY
12 PAY RENT AND THAT IS DETERMINED PURSUANT TO A RENTAL AGREEMENT
13 BETWEEN THE LANDLORD AND THE TENANT.

14 ~~(4)~~ (4) "Normal wear and tear" means that deterioration ~~which~~
15 THAT occurs, based upon the use for which the rental unit is intended,
16 without negligence, carelessness, accident, or abuse of the premises or
17 equipment or chattels by the tenant or members of ~~his~~ THE TENANT'S
18 household, or their invitees or guests.

19 (5) "RENT SUBSIDY PROVIDER" MEANS A PUBLIC OR PRIVATE
20 ENTITY, INCLUDING A PUBLIC HOUSING AUTHORITY, THAT PROVIDES
21 FINANCIAL ASSISTANCE TO A TENANT OR LANDLORD FOR THE PURPOSE OF
22 SUBSIDIZING RENT.

23 ~~(2)~~(6) "Security deposit" means any advance or deposit of money,
24 regardless of its denomination, the primary function of which is to secure
25 the performance of a rental agreement for A residential premises or any
26 part ~~thereof~~ OF A RESIDENTIAL PREMISES.

27 (7) "TENANT" HAS THE MEANING SET FORTH IN SECTION 38-12-502

1 (9).

2 (8) (a) "USE-BASED FEE" MEANS A FEE:

3 (I) THAT A LANDLORD REQUIRES A TENANT OR HOME OWNER TO
4 PAY IN EXCHANGE FOR THE USE OF A SERVICE OR FACILITY THAT IS
5 LOCATED IN THE COMMON AREAS OF A RESIDENTIAL PREMISES OR A
6 MOBILE HOME PARK; AND

7 (II) THE AMOUNT OF WHICH IS BASED ON THE AMOUNT OF THE
8 TENANT'S USE OF THE SERVICE OR FACILITY.

9 (b) A FEE IS NOT A USE-BASED FEE IF:

10 (I) A LANDLORD REQUIRES A TENANT OR HOME OWNER TO PAY THE
11 FEE REGARDLESS OF WHETHER THE TENANT OR HOME OWNER USES THE
12 SERVICE OR FACILITY THAT IS ASSOCIATED WITH THE FEE; OR

13 (II) DIFFERENT TENANTS OR HOME OWNERS ARE ASSESSED THE FEE
14 IN THE SAME AMOUNT DESPITE USING THE SERVICE OR FACILITY THAT IS
15 ASSOCIATED WITH THE FEE IN DIFFERENT FREQUENCIES, AMOUNTS, OR
16 LEVELS.

17 **SECTION 3.** In Colorado Revised Statutes, 38-12-103, **amend**
18 (1) as follows:

19 **38-12-103. Return of security deposit - recoupment of late fees.**

20 (1) (a) ~~A landlord shall~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
21 SECTION, within one month after the termination of a lease or THE
22 surrender and acceptance of ~~the~~ A premises, whichever occurs last, A
23 LANDLORD SHALL return to the tenant OR HOME OWNER the full security
24 deposit deposited with the landlord by the tenant OR HOME OWNER, unless
25 the lease agreement specifies a longer period of time, but not to exceed
26 sixty days.

27 (b) ~~No~~ A LANDLORD SHALL NOT RETAIN A security deposit ~~shall be~~

1 ~~retained~~ to cover normal wear and tear.

2 (c) ~~In the event that~~ IF actual cause exists for retaining any portion
3 of ~~the~~ A security deposit, INCLUDING THE RECOUPMENT OF LATE FEES
4 PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION, the landlord shall
5 provide the tenant OR HOME OWNER with a written statement listing the
6 exact reasons for the retention of any portion of the security deposit.
7 When the statement is delivered, it ~~shall~~ MUST be accompanied by
8 payment of the difference between any sum deposited and the amount
9 retained. ~~The~~ A landlord is deemed to have complied with this ~~section~~
10 SUBSECTION (1)(c) by mailing ~~said~~ THE statement and any payment
11 required to the last-known address of the tenant OR HOME OWNER.

12 (d) Nothing in this section ~~shall preclude the~~ PRECLUDES A
13 landlord from retaining ~~the~~ A security deposit for nonpayment of rent,
14 abandonment of the premises, or nonpayment of utility charges, repair
15 work, or cleaning contracted for by the tenant OR HOME OWNER.

16 (e) A LANDLORD TO WHOM A TENANT OR HOME OWNER OWES ONE
17 OR MORE LATE FEES MAY RECOUP ONE OR MORE LATE FEES FROM THE
18 TENANT'S OR HOME OWNER'S SECURITY DEPOSIT EITHER BEFORE OR AFTER
19 THE EXPIRATION OF THE HOME OWNER'S TENANCY IF:

20 (I) THE PAYMENT OF EACH LATE FEE IS NO MORE THAN ONE
21 HUNDRED EIGHTY DAYS OVERDUE; AND

22 (II) THE LANDLORD PROVIDES WRITTEN NOTICE THAT, PURSUANT
23 TO THIS SECTION, THE LANDLORD HAS RECOUPED EACH LATE FEE FROM
24 THE SECURITY DEPOSIT PAID BY THE TENANT OR HOME OWNER. THE
25 NOTICE MUST LIST THE SPECIFIC LATE FEES THE LANDLORD IS RECOUPING,
26 INCLUDING THE AMOUNT OF EACH LATE FEE AND THE DATE THAT THE LATE
27 FEE WAS INCURRED.

1 **SECTION 4.** In Colorado Revised Statutes, **add** 38-12-105,
2 38-12-106, and 38-12-107 as follows:

3 **38-12-105. Late fees charged to tenants and mobile home**
4 **owners - maximum fee amounts - evictions prohibited - interest**
5 **prohibited - recoupment from rent payment prohibited - recoupment**
6 **from security deposit permitted.** (1) A LANDLORD SHALL NOT:

7 (a) CHARGE A TENANT OR HOME OWNER A LATE FEE FOR LATE
8 PAYMENT OF RENT UNLESS THE RENT PAYMENT IS LATE BY AT LEAST
9 FOURTEEN CALENDAR DAYS;

10 (b) CHARGE A TENANT OR HOME OWNER A LATE FEE IN AN AMOUNT
11 THAT EXCEEDS THE GREATER OF:

12 (I) TWENTY DOLLARS; OR

13 (II) THE LESSER OF THREE PERCENT OF THE TENANT'S OR HOME
14 OWNER'S MONTHLY RENT OBLIGATION OR THREE PERCENT OF THE AMOUNT
15 OF THE RENT OBLIGATION THAT REMAINS DUE;

16 (c) REMOVE OR EXCLUDE A TENANT FROM A DWELLING OR
17 INITIATE COURT PROCESS FOR THE REMOVAL OR EXCLUSION OF A TENANT
18 FROM A DWELLING BECAUSE THE TENANT FAILS TO PAY LATE FEES TO THE
19 LANDLORD;

20 (d) TERMINATE A TENANCY OR OTHER ESTATE AT WILL OR A LEASE
21 IN A MOBILE HOME PARK BECAUSE THE HOME OWNER FAILS TO PAY ONE OR
22 MORE LATE FEES TO THE LANDLORD;

23 (e) IMPOSE A LATE FEE ON A TENANT FOR THE LATE PAYMENT OR
24 NONPAYMENT OF ANY PORTION OF THE RENT FOR WHICH A RENT SUBSIDY
25 PROVIDER, RATHER THAN THE TENANT, IS RESPONSIBLE FOR PAYING;

26 (f) IMPOSE A LATE FEE MORE THAN ONCE FOR EACH LATE
27 PAYMENT;

1 (g) REQUIRE A TENANT OR HOME OWNER WHO OWES ONE OR MORE
2 LATE FEES TO THE LANDLORD TO PAY ANY AMOUNT OF INTEREST ON THE
3 LATE FEES; OR

4 (h) RECOUP ANY AMOUNT OF A LATE FEE FROM A RENT PAYMENT
5 MADE TO THE LANDLORD BY A TENANT OR HOME OWNER.

6 (2) A LANDLORD MAY RECOUP ONE OR MORE LATE FEES FROM A
7 TENANT OR HOME OWNER'S SECURITY DEPOSIT IN ACCORDANCE WITH
8 SECTION 38-12-103 (1)(e).

9 (3) (a) A TENANT OR HOME OWNER HAS A PRIVATE CIVIL RIGHT OF
10 ACTION AGAINST A LANDLORD WHO VIOLATES THIS SECTION. IN SUCH AN
11 ACTION, THE TENANT OR HOME OWNER IS ENTITLED TO THREE TIMES THE
12 AMOUNT BY WHICH THE IMPOSED LATE FEE EXCEEDS THE ALLOWABLE
13 AMOUNT OF THE LATE FEE, IF ANY, AS WELL AS ACTUAL ECONOMIC
14 DAMAGES AND REASONABLE ATTORNEY FEES AND COSTS IF THE TENANT
15 PREVAILS. IF A LANDLORD IS FOUND TO HAVE IMPOSED A LATE FEE IN BAD
16 FAITH, THE TENANT OR HOME OWNER IS ENTITLED TO DAMAGES IN AN
17 AMOUNT NOT LESS THAN TWO THOUSAND DOLLARS.

18 (b) THE ATTORNEY GENERAL OR THE DEPARTMENT OF LOCAL
19 AFFAIRS MAY FILE AN ACTION ON BEHALF OF A TENANT OR HOMEOWNER
20 AGAINST A LANDLORD WHO VIOLATES THIS SECTION.

21 (c) A TENANT OR HOME OWNER MAY RAISE AN ALLEGED
22 VIOLATION OF THIS SECTION AS AN AFFIRMATIVE DEFENSE IN A FORCIBLE
23 ENTRY AND DETAINER PROCEEDING.

24 **38-12-106. Fees prohibited generally - use-based fees**
25 **permitted.** (1) A LANDLORD SHALL NOT REQUIRE A TENANT OR HOME
26 OWNER TO PAY ANY FEE OR OTHER CHARGE OTHER THAN THE RENT, AS SET
27 FORTH IN THE RENTAL AGREEMENT; EXCEPT THAT A LANDLORD MAY

1 REQUIRE A TENANT OR HOME OWNER TO PAY A USE-BASED FEE THAT IS
2 DESCRIBED IN THE RENTAL AGREEMENT.

3 (2) A LANDLORD SHALL ENSURE THAT ANY USE-BASED FEE IS
4 DESCRIBED IN A RENTAL AGREEMENT WITH A TENANT OR HOME OWNER.

5 (3) A LANDLORD MAY INCREASE THE AMOUNT OF A USE-BASED FEE
6 ONLY AS PROVIDED IN THE RENTAL AGREEMENT AND AS PERMITTED BY
7 THIS ARTICLE 12. ANY SUCH INCREASE MUST BE REASONABLY RELATED TO
8 AN INCREASE IN THE LANDLORD'S OWN COSTS.

9 **38-12-107. Utility costs to be included in rent.** (1) IF A
10 LANDLORD PROVIDES TO A TENANT OR HOME OWNER A UTILITY SERVICE
11 THAT IS NOT INDIVIDUALLY METERED, THE LANDLORD SHALL:

12 (a) INCLUDE THE COST OF THE UTILITY SERVICE IN THE TENANT'S
13 OR HOME OWNER'S RENT; AND

14 (b) CHARGE THE ACTUAL COST OF THE UTILITY SERVICE ON A
15 UNIFORM BASIS TO ALL TENANTS OR HOME OWNERS WHO RECEIVE THE
16 SERVICE.

17 **SECTION 5.** In Colorado Revised Statutes, 38-12-201.5, **add**
18 (1.3) as follows:

19 **38-12-201.5. Definitions.** As used in this part 2 and in part 11 of
20 this title 38, unless the context otherwise requires:

21 (1.3) "LATE FEE" HAS THE MEANING SET FORTH IN SECTION
22 38-12-102 (3).

23 **SECTION 6.** In Colorado Revised Statutes, 38-12-207, **add** (3)
24 as follows:

25 **38-12-207. Security deposits - legal process - recoupment of**
26 **late fees.** (3) A LANDLORD MAY RECOUP ONE OR MORE LATE FEES FROM
27 A HOME OWNER'S SECURITY DEPOSIT IN ACCORDANCE WITH SECTION

1 38-12-103 (1)(e).

2 **SECTION 7.** In Colorado Revised Statutes, 38-12-213, **amend**
3 (1) introductory portion, (1)(c), and (1)(f) as follows:

4 **38-12-213. Rental agreement - disclosure of terms in writing.**

5 (1) The MANAGEMENT SHALL ADEQUATELY DISCLOSE THE terms and
6 conditions of a tenancy ~~must be adequately disclosed~~ in writing in a rental
7 agreement ~~by the management~~ to any prospective home owner ~~prior to~~
8 BEFORE the rental or occupancy of a mobile home space or lot. ~~Said~~ THE
9 disclosures ~~shall~~ MUST include:

10 (c) The day when unpaid rent ~~shall be~~ IS considered in default FOR
11 THE PURPOSE OF ESTABLISHING A LATE FEE, WHICH DAY MAY NOT BE LESS
12 THAN FOURTEEN CALENDAR DAYS AFTER THE DAY RENT IS DUE AND
13 PAYABLE;

14 (f) All charges to the home owner other than rent, INCLUDING
15 LATE FEES.

16 **SECTION 8.** In Colorado Revised Statutes, 13-54-102, **amend**
17 (1)(r) as follows:

18 **13-54-102. Property exempt - definitions.** (1) The following
19 property is exempt from levy and sale under writ of attachment or writ of
20 execution:

21 (r) For purposes of garnishment proceedings pursuant to ~~the~~
22 ~~provisions of~~ article 54.5 of this ~~title~~ TITLE 13, any amount held by a third
23 party as a security deposit, as defined in ~~section 38-12-102 (2), C.R.S.~~
24 SECTION 38-12-102 (6), or any amount held by a third party as a utility
25 deposit to secure payment for utility goods or services used or consumed
26 by the debtor or ~~his~~ THE DEBTOR'S dependents;

27 **SECTION 9.** In Colorado Revised Statutes, **amend** 38-12-220 as

1 follows:

2 **38-12-220. Private civil right of action.** ~~Any~~ EXCEPT AS
3 PROVIDED IN SECTION 38-12-105 (3), A home owner ~~who owns a home in~~
4 ~~a mobile home~~ park where the landlord has violated any provision of this
5 ~~article shall have~~ ARTICLE 12 HAS a private civil right of action against the
6 landlord. In any such action, the home owner ~~shall be~~ IS entitled to actual
7 economic damages and reasonable attorney fees and costs if the home
8 owner is successful in the action.

9 **SECTION 10. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, or safety.