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Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

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DRAFT

LLS NO. 20-0262.01 Richard Sweetman x4333

HOUSE BILL

HOUSE SPONSORSHIP

Caraveo and Gonzales-Gutierrez,

SENATE SPONSORSHIP

Gonzales,

BILL TOPIC: "Fees Charged To Tenants By Landlords"
DEADLINES: Finalize by: JAN 9, 2020 File by: JAN 14, 2020

A BILL FOR AN ACT

101 CONCERNING 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 (a) \$20 or (b) the lesser of 3 percent of the tenant's or home owner's monthly rent

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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obligation or 3 percent 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 home owner to pay any fee or other charge other than the rent; except that, a landlord may require a tenant or home owner to pay a use-based fee that is described in the rental agreement.

If a landlord provides to a tenant or 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 home owner's rent and charge the actual cost of the utility service on a uniform basis to all tenants or 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.

9 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-12-102 as

1 follows:

2 **38-12-102. Definitions.** As used in this part 1, unless the context
3 otherwise requires:

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

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

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

13 ~~(4)~~ (4) "Normal wear and tear" means that deterioration ~~which~~
14 THAT occurs, based upon the use for which the rental unit is intended,
15 without negligence, carelessness, accident, or abuse of the premises or
16 equipment or chattels by the tenant or members of ~~his~~ THE TENANT'S
17 household, or their invitees or guests.

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

22 ~~(2)(6)~~ (6) "Security deposit" means any advance or deposit of money,
23 regardless of its denomination, the primary function of which is to secure
24 the performance of a rental agreement for A residential premises or any
25 part ~~thereof~~ OF A RESIDENTIAL PREMISES.

26 (7) "TENANT" HAS THE MEANING SET FORTH IN SECTION 38-12-502
27 (9).

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1 (8) (a) "USE-BASED FEE" MEANS A FEE:
2 (I) THAT A LANDLORD REQUIRES A TENANT OR HOME OWNER TO
3 PAY IN EXCHANGE FOR THE USE OF A SERVICE OR FACILITY THAT IS
4 LOCATED IN THE COMMON AREAS OF A RESIDENTIAL PREMISES OR A
5 MOBILE HOME PARK; AND

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

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

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

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

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

18 **38-12-103. Return of security deposit - recoupment of late fees.**

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

26 (b) ~~No~~ A LANDLORD SHALL NOT RETAIN A security deposit ~~shall be~~
27 retained to cover normal wear and tear.

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

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

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

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

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

27 **SECTION 4.** In Colorado Revised Statutes, **add** 38-12-105, 38-

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1 12-106, and 38-12-107 as follows:

2 **38-12-105. Late fees charged to tenants and mobile home**
3 **owners - maximum fee amounts - evictions prohibited - interest**
4 **prohibited - recoupment from rent payment prohibited - recoupment**
5 **from security deposit permitted.** (1) A LANDLORD SHALL NOT:

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

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

11 (I) TWENTY DOLLARS; OR

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

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

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

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

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

27 (g) REQUIRE A TENANT OR HOME OWNER WHO OWES ONE OR MORE

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1 LATE FEES TO THE LANDLORD TO PAY ANY AMOUNT OF INTEREST ON THE
2 LATE FEES; OR

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

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

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

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

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

23 **38-12-106. Fees prohibited generally - use-based fees**
24 **permitted. (1) A LANDLORD SHALL NOT REQUIRE A TENANT OR HOME**
25 **OWNER TO PAY ANY FEE OR OTHER CHARGE OTHER THAN THE RENT, AS SET**
26 **FORTH IN THE RENTAL AGREEMENT; EXCEPT THAT, A LANDLORD MAY**
27 **REQUIRE A TENANT OR HOME OWNER TO PAY A USE-BASED FEE THAT IS**

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1 DESCRIBED IN THE RENTAL AGREEMENT.

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

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

8 **38-12-107. Utility costs to be included in rent.** (1) IF A
9 LANDLORD PROVIDES TO A TENANT OR HOME OWNER A UTILITY SERVICE
10 THAT IS NOT INDIVIDUALLY METERED, THE LANDLORD SHALL:

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

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

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

18 **38-12-201.5. Definitions.** As used in this part 2 and in part 11 of
19 this title 38, unless the context otherwise requires:

20 (1.3) "LATE FEE" HAS THE MEANING SET FORTH IN SECTION
21 38-12-102 (3).

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

24 **38-12-207. Security deposits - legal process - recoupment of**
25 **late fees.** (3) A LANDLORD MAY RECOUP ONE OR MORE LATE FEES FROM
26 A HOME OWNER'S SECURITY DEPOSIT IN ACCORDANCE WITH SECTION
27 38-12-103 (1)(e).

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

3 **38-12-213. Rental agreement - disclosure of terms in writing.**

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

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

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

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

17 **13-54-102. Property exempt - definitions.** (1) The following
18 property is exempt from levy and sale under writ of attachment or writ of
19 execution:

20 (r) For purposes of garnishment proceedings pursuant to ~~the~~
21 ~~provisions of~~ article 54.5 of this ~~title~~ TITLE 13, any amount held by a third
22 party as a security deposit, as defined in ~~section 38-12-102 (2), C.R.S.~~
23 SECTION 38-12-102 (5), or any amount held by a third party as a utility
24 deposit to secure payment for utility goods or services used or consumed
25 by the debtor or ~~his~~ THE DEBTOR'S dependents;

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

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1 **38-12-220. Private civil right of action.** ~~Any~~ EXCEPT AS
2 PROVIDED IN SECTION 38-12-105 (3), A home owner who owns a home in
3 a mobile home park where the landlord has violated any provision of this
4 article shall have HAS a private civil right of action against the landlord.
5 In any such action, the home owner shall be is entitled to actual economic
6 damages and reasonable attorney fees and costs if the home owner is
7 successful in the action.

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