

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

INTRODUCED

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.*

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) as follows:

4 **38-12-801. Written rental agreement - prohibited clauses -**
5 **copy - tenant - definition.** (3) (a) A written rental agreement must not
6 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;
10 (B) THE ABILITY TO PURSUE, BRING, JOIN, LITIGATE, OR SUPPORT
11 ANY KIND OF JOINT, CLASS, OR COLLECTIVE CLAIM OR ACTION ARISING
12 FROM OR RELATING TO THE TERM OF THE TENANCY;
13 (C) THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
14 OR
15 (D) THE IMPLIED COVENANT OF QUIET ENJOYMENT;
16 (IV) A PROVISION THAT PURPORTS TO AFFIX ANY FEE, DAMAGES,
17 OR PENALTY FOR A TENANT'S FAILURE TO PROVIDE NOTICE OF
18 NONRENEWAL OF A RENTAL AGREEMENT PRIOR TO THE END OF THE
19 RENTAL AGREEMENT;
20 (V) A PROVISION THAT CHARACTERIZES ANY AMOUNT OR FEE SET
21 FORTH IN THE RENTAL AGREEMENT, WITH THE SOLE EXCEPTION OF THE SET
22 MONTHLY PAYMENT FOR OCCUPANCY OF THE PREMISES, AS "RENT" FOR
23 WHICH ALL REMEDIES TO COLLECT RENT, INCLUDING EVICTION, ARE
24 AVAILABLE. SUCH AMOUNTS AND FEES INCLUDE ANY FEES FOR UTILITIES
25 OR SERVICES AND ANY OTHER CHARGE THAT IS NOT RENT.
26 (VI) A PROVISION THAT REQUIRES A TENANT TO PAY A FEE FOR A
27 SERVICE FOR WHICH THE LANDLORD IS BILLED BY A THIRD PARTY, WHICH

1 FEE IS IN AN AMOUNT THAT EXCEEDS THE AMOUNT BILLED TO THE
2 LANDLORD, OR THAT PURPORTS TO CHARGE A FEE TO RECOUP COSTS
3 INCURRED BY THE LANDLORD IN PROCESSING SUCH SERVICES OR BILLING.

4 ~~(c)~~ (b) Any ~~clause~~ PROVISION THAT IS INCLUDED IN A WRITTEN
5 RENTAL AGREEMENT in violation of subsection (3)(a) ~~or (3)(b)~~ of this
6 section is ~~null and~~ void and unenforceable.

7 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
8 REQUIRES, "RENT" MEANS ANY MONEY OR OTHER CONSIDERATION TO BE
9 PAID TO A LANDLORD FOR THE RIGHT TO USE, POSSESS, AND OCCUPY A
10 PREMISES.

11 **SECTION 2. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly; except that, if a referendum petition is filed pursuant
15 to section 1 (3) of article V of the state constitution against this act or an
16 item, section, or part of this act within such period, then the act, item,
17 section, or part will not take effect unless approved by the people at the
18 general election to be held in November 2024 and, in such case, will take
19 effect on the date of the official declaration of the vote thereon by the
20 governor.

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