

SENATE BILL NO. 1400

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute—Senator Salim)

A BILL to amend the Code of Virginia by adding a section numbered 55.1-1204.2, relating to Virginia Residential Landlord and Tenant Act; algorithmic device services or products prohibited; civil penalty.

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 55.1-1204.2 as follows:****§ 55.1-1204.2. Algorithmic device services or products prohibited; civil penalty.***A. For purposes of this section:*

"Algorithmic device" means a device, commonly known as revenue management software, that uses one or more algorithms to perform calculations of non-public competitor data concerning local or statewide rent amounts or occupancy levels for the purpose of advising a landlord on whether to leave a unit vacant or on the amount of rent that the landlord may obtain for that unit. "Algorithmic device" includes a product that incorporates an algorithmic device but does not include (i) any report that publishes existing rental data in an aggregate manner but does not recommend rents or occupancy levels for future leases or (ii) a product used for the purpose of establishing rent or income limits in accordance with the affordable housing program guidelines of a local government, the Commonwealth, the federal government, or other political subdivision.

"Nonpublic competitor data" means information that is not available to the general public, including information about actual rent prices, occupancy rates, lease start and end dates, and similar data, regardless of whether the data is attributable to a specific competitor or anonymized, and regardless of whether the data is derived from or otherwise provided by another person that competes in the same market or a related market.

B. It shall be unlawful to sell, license, or otherwise provide to landlords any algorithmic device that uses nonpublic competitor data for the purpose of setting, recommending, or advising landlords on rents or occupancy levels that may be achieved for residential dwelling units.

C. It shall be unlawful for a landlord to use an algorithmic device described in subsection B when setting rents or occupancy levels for residential dwelling units. Each separate month that a violation exists or continues, and each separate residential dwelling unit for which the landlord used the algorithmic device,

31 *shall constitute a separate and distinct violation.*

32 *D. The Attorney General may cause an action to be brought in the name of the Commonwealth to enjoin*
33 *any violation of this section by any person and to recover a civil penalty in the amount of not less than \$1,000*
34 *nor more than \$5,000 for each such violation. Civil penalties paid pursuant to this section shall be deposited*
35 *into the Literary Fund.*

36 *In an action brought under this section, the Attorney General may recover damages and such other relief*
37 *allowed by law, including restitution on behalf of tenants injured by violations of this section.*

38 *In an action brought under this section, the Attorney General may recover reasonable expenses incurred*
39 *in investigating and preparing the case and attorney fees.*

40 *Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is*
41 *engaging in, or is about to engage in any violation of this section, the Attorney General is empowered to*
42 *issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply, mutatis mutandis, to civil*
43 *investigative demands issued pursuant to this section.*

44 *Nothing in this section shall be construed as affecting any private cause of action that may exist under any*
45 *law of the Commonwealth.*