COLORADO
APARTMENT ASSOCIATION

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April 30, 2025

The Honorable Jared Polis
Governor, State of Colorado
200 East Colfax Avenue
Denver, CO 80203

Re: HB25-1004 Veto Request

Honorable Governor Polis,

I am writing to explain the Colorado Apartment Association's continuing opposition to HB25-1004 and to request that you veto this bill which would prohibit valuable tools for measuring the free market for Colorado residential rental properties and efficiently pricing those properties based on current demand.

Rent prices are driven by supply and demand – not the calculators, computers and software that are used as tools to assist in operational decision-making, which HB25–1004 would ban. Removing a housing provider's ability to use normal technology and tools to aid its business decision-making will not improve housing affordability or availability. Rather, it will force decision makers to rely on stale information and spend significantly more time and money sorting through Colorado's hundreds of thousands of rental units to assemble relevant comparable units for the purpose of measuring the market.

Accurately measuring a market is good for suppliers and consumers and critical to the functioning of any free market. Free markets depend on accurate information on supply and demand to reach the equilibrium of appropriate price. Information about current or past prices (whether it be a year ago, a day ago or a second ago) does not manipulate the market but merely measures it. Forcing rental housing providers to price their inventory based on trial-and-error pricing, does nothing except make the market less effective and ultimately leads to higher vacancy rates (and less Coloradans being housed by the same number of housing units), as the market suffers from suppliers that have wrongly guessed their units are more valuable than they are.

This is particularly true in the current rental market where average rental prices today are lower than they were three years ago. This remarkable stability in prices is a function of unprecedented numbers of new rental housing units being brought to the market, not the use of computerized pricing tools. However, those tools allow a housing provider to more quickly recognize falling prices and increasing vacancies, rather than mistakenly offering their properties for yesterday's higher prices.

There are several less obvious advantages to these tools when supplied by third party vendors. They even the playing field between large and small housing providers by giving a rental housing supplier without a large portfolio accurate up to date information on what the market is doing (which a larger supplier can ascertain from their own large inventory). Third-party price recommendations do not consider any personal or demographic information and prevent housing discrimination by removing the demographic factors of the applicant from the pricing decision.

Of course these computerized pricing tools are means of communication. Like all means of communication, they could be misused to create price collusion. That would be done if competitors exchanged information on their plans regarding future pricing decisions. There is nothing wrong or objectionable with a state statute that prohibits price collusion when using computerized revenue tools, although that price collusion is already prohibited by both state and federal law. The problem is HB25-1004 calls all sharing of information collusion. It makes no distinction about whether the information exchanged is about current and past prices (which is good for the market) or intentions regarding future prices (which is bad for the market). It makes no distinction about whether the information used is public information or nonpublic information.

The crux of the bill's flaw can be seen in the definition of what a third-party vendor is prohibited from providing (found beginning at page 3 line 3 of the Re-revised version of the bill dated April 28, 2025).

> **38-12-703. Determination of rent amount - sale, distribution, and use of algorithmic devices prohibited - illegal restraint of trade or commerce - definitions.**
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> (1) (a) the sale or distribution for consideration of an algorithmic device is prohibited if:
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> (I) the algorithmic device is sold or distributed with the intent that it will be used by two or more landlords in the same market or a related market to set or recommend the amount of rent, level of occupancy, or other commercial term associated with the occupancy of a residential premises; and
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> (II) The device sets or recommends the amount of rent, level of occupancy, or other commercial term associated with the occupancy of a residential premises based on data or a formula that is similar for each landlord.

The "data" will be the same for all users (whether rents and vacancies have been going up or down). The "analysis" will be the same for all users (if inventory turnover is decreasing and vacancies are rising, prices should be lowered - if inventory turnover is increasing and vacancies are falling, prices should be increased). Consequently, the bill can be boiled down to a vendor of computerized price recommendations can only have one customer. This prohibition will effectively ban these valuable products in Colorado.

We cannot prohibit collusion and then call all information and analysis collusion. Computerized tools to make the best possible business decisions are good for suppliers and consumers.

We respectfully request that you veto HB25-1004.

Respectfully,



Andrew C. Hamrick
General Counsel
Colorado Apartment Association