

118TH CONGRESS
2D SESSION

S. 3692

To prohibit the use of algorithmic systems to artificially inflate the price or reduce the supply of leased or rented residential dwelling units in the United States.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2024

Mr. WYDEN (for himself, Mr. WELCH, Ms. KLOBUCHAR, Mr. SANDERS, Mr. BLUMENTHAL, Ms. HIRONO, Ms. BUTLER, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit the use of algorithmic systems to artificially inflate the price or reduce the supply of leased or rented residential dwelling units in the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing the Algo-
5 rithmic Facilitation of Rental Housing Cartels Act of
6 2024”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) CHAIR.—The term “Chair” means the
2 Chair of the Commission.

3 (2) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (3) CONSCIOUSLY PARALLEL PRICING COORDI-
6 NATION.—The term “consciously parallel pricing co-
7 ordination” means a tacit agreement between 2 or
8 more rental property owners to raise, lower, change,
9 maintain, or manipulate pricing for the purchase or
10 sale of reasonably interchangeable products or serv-
11 ices.

12 (4) COORDINATING FUNCTION.—The term “co-
13 ordinating function” means—

14 (A) collecting historical or contempora-
15 neous prices, supply levels, or lease or rental
16 contract termination and renewal dates of resi-
17 dential dwelling units from 2 or more rental
18 property owners;

19 (B) analyzing or processing of the informa-
20 tion described in subparagraph (A) using a sys-
21 tem, software, or process that uses computa-
22 tion, including by using that information to
23 train an algorithm; and

1 (C) recommending rental prices, lease re-
2 newal terms, or ideal occupancy levels to a rent-
3 al property owner.

4 (5) COORDINATOR.—The term “coordinator”
5 means any person that operates a software or data
6 analytics service that performs a coordinating func-
7 tion for any rental property owner, including a rent-
8 al property owner performing a coordinating func-
9 tion for their own benefit.

10 (6) PERSON.—The term “person” has the
11 meaning given the term in subsection (a) of the first
12 section of the Clayton Act (15 U.S.C. 12).

13 (7) PRE-DISPUTE ARBITRATION AGREEMENT.—
14 The term “pre-dispute arbitration agreement”
15 means an agreement between 2 or more parties to
16 arbitrate a dispute between the parties that is made
17 before any dispute has arisen.

18 (8) PRE-DISPUTE JOINT ACTION WAIVER.—The
19 term “pre-dispute joint action waiver” means an
20 agreement between 2 or more parties, which may be
21 part of a pre-dispute arbitration agreement, that—

22 (A) would prohibit or waive the right of a
23 party to participate in a joint, class, or collec-
24 tive action in a judicial, arbitral, administrative,

1 or other forum relating to a dispute between
2 parties; and

3 (B) is made before any dispute has arisen.

4 (9) RESIDENTIAL DWELLING UNIT.—The term
5 “residential dwelling unit”—

6 (A) means any house, apartment, accessory
7 unit, or other unit intended to be used as a pri-
8 mary residence; and

9 (B) does not include inpatient medical
10 care, licensed long-term care, and detention or
11 correctional facilities.

12 (10) RENTAL PROPERTY OWNER.—The term
13 “rental property owner” means any individual, cor-
14 poration, partnership, association, joint-stock compa-
15 nies, trusts, or unincorporated organizations that
16 owns real property and leases or rents such property
17 or any portion thereof in the form of 4 or more resi-
18 dential dwelling units.

19 (11) STATE.—The term “State” means any
20 State of the United States, the District of Columbia,
21 the Commonwealth of Puerto Rico, and any territory
22 or possession of the United States.

23 **SEC. 3. UNLAWFUL CONDUCT.**

24 (a) IN GENERAL.—

1 (1) CONTRACT OR CONSPIRACY IN RESTRAINT
2 OF TRADE.—It is unlawful for a rental property
3 owner, in or affecting commerce, or any agent or
4 subcontractor thereof, to subscribe to, contract with,
5 or otherwise exchange anything of value in return
6 for the services of a coordinator, and such action
7 shall be deemed to be a per se violation of the Sher-
8 man Act (15 U.S.C. 1 et seq.).

9 (2) FACILITATION.—It is unlawful for a coordi-
10 nator, in or affecting commerce, to facilitate an
11 agreement among rental property owners to not
12 compete with respect to residential dwelling units,
13 including by performing a coordinating function.

14 (3) ANTI-COMPETITIVE MERGER.—It is unlaw-
15 ful for any coordinator, in or affecting commerce, to
16 acquire, directly or indirectly, the whole or any part
17 of the stock or other share capital of another coordi-
18 nator if the acquisition would create an appreciable
19 risk of materially lessening competition in violation
20 of section 7 of the Clayton Act (15 U.S.C. 18), or
21 tend to create a monopoly or monopsony, and any
22 such acquisition shall be deemed a violation of such
23 section.

24 **SEC. 4. ENFORCEMENT.**

25 (a) ENFORCEMENT.—

1 (1) IN GENERAL.—

2 (A) FEDERAL TRADE COMMISSION.—The
3 Commission shall enforce this Act in the same
4 manner, by the same means, and with the same
5 jurisdiction, powers, and duties as though all
6 applicable terms of the Federal Trade Commis-
7 sion Act (15 U.S.C. 41 et seq.) were incor-
8 porated into and made a part of this Act.

9 (B) ATTORNEY GENERAL.—The Attorney
10 General shall enforce this Act in the same man-
11 ner, by the same means, and with the same ju-
12 risdiction, powers and duties as though all ap-
13 plicable terms of the Sherman Act (15 U.S.C.
14 1 et seq.), Clayton Act (15 U.S.C. 12 et seq.),
15 and Antitrust Civil Process Act (15 U.S.C.
16 1311 et seq.) were incorporated into and made
17 a part of this Act.

18 (C) STATE ATTORNEYS GENERAL.—Any
19 attorney general of a State shall enforce this
20 Act in the same manner, by the same means,
21 and with the same jurisdiction, powers and du-
22 ties as though all applicable terms of the Sher-
23 man Act (15 U.S.C. 1 et seq.) and the Clayton
24 Act (15 U.S.C. 12 et seq.) were incorporated
25 into and made a part of this Act.

1 (2) UNFAIR METHODS OF COMPETITION.—A
2 violation of this Act shall also constitute an unfair
3 method of competition under section 5 of the Fed-
4 eral Trade Commission Act (15 U.S.C. 45).

5 (3) INDEPENDENT LITIGATION AUTHORITY.—If
6 the Commission has reason to believe that a person
7 violated this Act, the Commission may commence a
8 civil action, in its own name by any of its attorneys
9 designated by it for such purpose, to recover a civil
10 penalty and seek other appropriate relief in any dis-
11 trict court of the United States.

12 (4) STANDARDS OF PLEADING.—In a civil ac-
13 tion under this subsection, a complaint—

14 (A) plausibly pleads a violation of section
15 1 or 3(a) of the Sherman Act (15 U.S.C. 1,
16 3(a)) if the complaint contains factual allega-
17 tions, including allegations of consciously par-
18 allel pricing coordination, demonstrating that
19 the existence of a contract, combination in the
20 form of trust or otherwise, or conspiracy in re-
21 straint of trade or commerce is among the
22 realm of plausible possibilities; and

23 (B) need not allege facts tending to ex-
24 clude the possibility of independent action.

25 (b) CIVIL ACTIONS BY INJURED PERSONS.—

1 (1) CIVIL ACTION AUTHORIZED.—Any person
2 who is aggrieved by a violation of this Act may bring
3 a civil action in an appropriate district court of the
4 United States, without respect to the amount in con-
5 troversy, to recover an amount described in para-
6 graph (2).

7 (2) AWARD AMOUNT.—

8 (A) IN GENERAL.—The court shall award
9 to the plaintiff threefold the damages sustained
10 by the plaintiff and the reasonable cost of liti-
11 gation, including a reasonable attorney fee.

12 (B) INTEREST ON DAMAGES.—Pursuant to
13 a motion by the plaintiff promptly made, the
14 court may award simple interest on actual dam-
15 ages sustained by the plaintiff for the period
16 beginning on the date of service of the pleading
17 of the plaintiff setting forth a claim under this
18 Act and ending on the date of judgment, or for
19 any shorter period therein.

20 (3) INVALIDITY OF PRE-DISPUTE ARBITRATION
21 AGREEMENTS AND PRE-DISPUTE JOINT ACTION
22 WAIVERS.—At the election of the plaintiff in an ac-
23 tion authorized under paragraph (1), a pre-dispute
24 arbitration agreement or pre-dispute joint action

1 waiver relating to a violation of this Act shall be in-
2 valid or unenforceable.

3 **SEC. 5. RELATIONSHIP TO STATE AND LOCAL LAWS.**

4 Nothing in this Act may be construed to preempt any
5 State, Tribal, city, or local law, regulation, or ordinance
6 that explicitly supplements this Act.

7 **SEC. 6. SEVERABILITY.**

8 If any provision of this Act, or the application of such
9 a provision to any person or circumstance, is held to be
10 unconstitutional, the remaining provisions of this Act, and
11 the application of such provisions to any person or cir-
12 cumstance shall not be affected thereby.

○