STATE OF NEW YORK

9609

IN SENATE

May 16, 2024

Introduced by Sens. KRUEGER, CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to prohibiting the use of algorithmic systems to artificially inflate the price or reduce the supply of leased or rented residential dwelling units in the state

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York Preventing the Algorithmic Facilitation of Rental Housing Cartels Act of 2024".

§ 2. The real property law is amended by adding a new section 222-a to read as follows:

§ 222-a. Algorithmic systems. 1. As used in this section:

(a) "Consciously parallel pricing coordination" means a tacit agreement between two or more rental property owners to raise, lower, change, maintain, or manipulate pricing for the purchase or sale of reasonably interchangeable products or services.

(b) "Coordinating function" means:

(i) collecting historical or contemporaneous prices, supply levels, or lease or rental contract termination and renewal dates of residential dwelling units from two or more rental property owners;

(ii) analyzing or processing of the information described in subparagraph (i) of this paragraph using a system, software, or process that uses computation, including by using that information to train an algorithm; and

(iii) recommending rental prices, lease renewal terms, or ideal occupancy levels to a rental property owner.

(c) "Coordinator" means any person that operates a software or data analytics service that performs a coordinating function for any rental property owner, including a rental property owner performing a coordinating function for their own benefit.

(d) "Division" means the division of housing and community renewal.

(e) "Person" means any individual, corporation, partnership, association, trustee, municipality or other legal entity, including corpo-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD14362-02-4

rations and associations existing under or authorized by the laws of either the United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country; provided that "person" shall not include the state or any state agency.

(f) "Pre-dispute arbitration agreement" means an agreement between two or more parties to arbitrate a dispute between the parties that is made before any dispute has arisen.

(g) "Pre-dispute joint action waiver" means an agreement between two or more parties, which may be part of a pre-dispute arbitration agreement, that:

(i) would prohibit or waive the right of a party to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum relating to a dispute between two parties; and

(ii) is made before any dispute has arisen.

(h) "Residential dwelling unit" means any house, apartment, accessory unit, or other unit intended to be used as a primary residence; provided that "residential dwelling unit" does not include inpatient medical care, licensed long-term care, and detention or correctional facilities.

(i) "Rental property owner" means any individual, corporation, partnership, association, joint-stock company, trust, or unincorporated organization that owns real property and leases or rents such property or any portion thereof in the form of four or more residential dwelling units.

2. It is unlawful for:

(a) a rental property owner, in or affecting commerce, or any agent or subcontractor thereof, to subscribe to, contract with, or otherwise exchange anything of value in return for the services of a coordinator;

(b) a coordinator, in or affecting commerce, to facilitate an agreement among rental property owners to not compete with respect to residential dwelling units, including by performing a coordinating function; or

(c) any coordinator, in or affecting commerce, to acquire, directly or indirectly, the whole or any part of the stock or other share capital of another coordinator if the acquisition would create an appreciable risk of materially lessening competition, or tend to create a monopoly or monopsony, and any such acquisition shall be deemed a violation of this section.

3. (a) In addition to any other action or proceeding authorized by law, the attorney general may bring an action or special proceeding in the supreme court, in the name and on behalf of the people of the state of New York, against a person violating the provisions of this section to enjoin such person from continuing the violation or engaging in any acts in furtherance thereof, to compel compliance with the provisions of this section and/or to recover any monetary penalty for such violation. Any such action or proceeding may be compromised or discontinued on application of the department upon such terms as the court shall approve and order.

(b) If the department has reason to believe that a person violated this section, the department may commence a civil action, in its own name by any of its attorneys designated by it for such purpose, to recover a civil penalty and seek other appropriate relief in any court of competent jurisdiction.

(c) All monies recovered in any such action or special proceeding, together with the costs thereof shall be paid into the state treasury to the credit of the general fund.

4. In a civil action under this section, a complaint:

(a) plausibly pleads a violation of this section and if the complaint contains factual allegations, including allegations of consciously parallel pricing coordination, demonstrating that the existence of a contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is among the realm of plausible possibilities; and

(b) need not allege facts tending to exclude the possibility of independent action.

5. A pre-dispute arbitration agreement or pre-dispute joint action waiver relating to a violation of this section shall be invalid or unenforceable.

6. Nothing in this section shall be construed to preempt any state, tribal, city, or local law, regulation, or ordinance that explicitly supplements this section.

§ 3. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately.