

Oregon Needs More Homes, Not More Lawsuits—Vote No on SB 722

SB 722 grants a private right of action against landlords who set rents or leave properties vacant based on commercial software that uses algorithms relying on nonpublic data. The bill's overly broad provisions would harm renters and severely deter investment in much-needed housing.

No Need for Damages

A landlord would have liability under this statute without any damage to the tenant. Whether rent was increased, decreased, or remained the same, setting rent after viewing the information disseminated by such software would expose the landlord to liability. If the landlord decided to lower the rent on the unit to undercut the market rate after viewing the information, the landlord would be liable. Establishing a rental fee would in itself constitute a violation.

Overbroad Language and Impossible Compliance

Landlord decisions with respect to the rental of their property are made illegal if they are “based on” software “designed to use” algorithms that “rely on” nonpublic data. **Liability based on such nebulous and difficult-to-asertain standards is virtually without precedent, yet no definition or parameters defining these terms are included.** Further, how software is designed is not within the power of a user of software to know—such information is typically proprietary. Algorithms are an integral part of all software, even search engines, and a landlord cannot be expected to have the expertise or knowledge to know how all software it uses has been designed.

Private Right of Action

To enforce its prohibition against landlords' use of software that contains nonpublic content, the bill relies on a private right of action. If enacted, this private right of action will invite a flood of nuisance lawsuits across the state, owing to both the vague and overbroad language used in the prohibition and the lack of any requirement to prove that rents would have been lower without the use of banned information. Consequently, the bill will lead to increased rates of unnecessary and expensive litigation, significantly raising the cost of operating rental housing in the state. These added costs will, in turn, drive rents higher and discourage developers from investing in the construction of new apartment complexes in Oregon.

There's no question the state lacks sufficient rental properties to meet Oregonians' needs. However, introducing novel proposals with vague language—which could invite costly litigation against housing providers—will ultimately do more harm than good in addressing Oregon's housing crisis.

