LFC Requester:	Jeannae Leger

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: January 31, 2025

Bill Number: HB215

Check all that apply:

Original x Correction ____

Amendment ____ Substitute ____

Sponsor: Rep. Andrea Romero, Rep. Angelica Rubio

Short Title: NO USE OF AI FOR RENT MANIPULATION

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: AAG Jeff Dan Herrera

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill 215 (the "Bill" or "HB215") amends the Uniform Owner-Resident Relations Act ("UORRA") to prohibit the use of coordinating firms or software to set rental prices in the housing market. The Bill contains only one section, adding a new section to UORRA. The Section contains a definitions subsection, a substantive prohibitions subsection, and a subsection defining the venue for causes of action brought under the section. The Bill prohibits 1) owners (defined under existing UORRA sections) or their agents from contracting with services that collect pricing data from two or more rental property owners to recommend prices; 2) coordinators from facilitating an agreement among owners that restricts competition for in the rental housing market; and 3) owners from engaging in consciously parallel pricing coordination. The venue subsection would restrict plaintiffs from filing actions only to those venues where the owner resides, the owner's agent resides, or where service may be obtained.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

The Bill responds to the high-profile issue of algorithmic price-fixing. The United States Department of Justice and several state attorneys general have brought suit under the antitrust laws against the main company providing algorithmic pricing recommendations for rental property owners, RealPage, as well as large landlords. *See* Amended Complaint, *United States, et al. v. RealPage, Inc., et al.*, No. 1:24-cv-00710-LCB-JLW (M.D.N.C. Jan. 7, 2025) (available at https://www.justice.gov/opa/media/1383316/dl?inline).

Relationship with Antitrust Law

While the Bill only contemplates the market for rental housing, the Bill extends New Mexico antitrust law through UORRA rather than the Antitrust Act. Price coordination among competitors is *per se* illegal under both federal and state antitrust law. *See United States v. Socony-Vacuum Oil Co.,* 310 U.S. 150, 224 n.59 (1940); NMSA 1978, § 57-1-15 (providing that New Mexico antitrust law be constructed in harmony with federal law, except as provided by the Antitrust Act). This includes an agreement to use the same pricing formulas. *See Socony-Vacuum Oil Co.*, 310 U.S. at 224 n.59 ("The effectiveness of price-fixing agreements is dependent on many factors, such as . . . the formula underlying price policies. Whatever economic justification

particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness."). The Bill's prohibition against owners contracting with third-party coordinators to effectuate a price-fixing scheme is similarly already prohibited. *See Am. Needle, Inc. v. NFL*, 560 U.S. 183, 202 (2010) ("[C]ompetitors cannot simply get around antitrust liability by acting through a third-party intermediary or joint venture." (cleaned up)).

The Bill's prohibition against "consciously parallel pricing coordination" may conflict with current antitrust law and create confusion for courts. Section 1(A) of the Bill defines "consciously parallel pricing coordination" as "a tacit agreement between two or more owners of separate properties to raise, lower, change, maintain, or manipulate pricing of rent for the separate properties." Under federal caselaw, conscious parallelism—otherwise referred to as "tacit collusion"—is a separate concept from tacit agreements. Tacit agreements are concerted action in violation of the antitrust laws. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 553 (2007) (citation omitted). Conscious parallelism, absent evidence of an agreement, fails to meet the threshold for an antitrust violation. *See Brooke Group Ltd. V. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993) ("Tacit collusion, sometimes called oligopolistic price coordination or conscious parallelism, describes the process, not in itself unlawful[…]."). The conflation of these terms in the definition may cause confusion to a court interpreting this law. Consider revision to avoid such confusion.

Remedies

The remedies available under this proposed statute, and the relationship with other provisions of UORRA, are unclear. Subsection 1(C) of the Bill permits persons injured by unlawful actions under the Bill to bring suit. The remedies available are not explicated by the bill, including damages. Typically in antitrust actions, injured parties may collect treble damages of the difference of the difference between the inflated, anticompetitive price and the price that would have been paid in a competitive market (as determined by a court through expert economic testimony). No such provision is available here. UORRA provides that injured residents may, in some circumstances, recover damages, but have a duty to mitigate damages. *See* NMSA 1978, § 47-8-6. As drafted, this provision of UORRA may apply to residents under anticompetitive pricing. It is not clear what mitigation of damages might require of a resident under these conditions. Additionally, UORRA provides that residents may seek termination of a rental agreement if an owner violates her obligations under Section 47-8-20. As drafted, it is not clear that this remedy is available to tenants under rental agreements affected by anticompetitive pricing.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

CONFLICT

Subsection 1(C) of the Bill defining the venue for actions under this statute may conflict with Section 47-8-10 NMSA 1978. As drafted, Subsection 1(C) says that injured person "may sue in court in the jurisdiction in the county in the state where the defendant resides or is found or an agent resides or is found or where service may be obtained." As drafted, it is not clear if the permissive "may" is intended to be an expansion of the jurisdiction identified Section 47-8-10 or a replacement jurisdictional provision limited to this Section. Additionally, the language "resides

or is found" is unclear. Typically, venue in New Mexico is available through residence of the parties, *see* Section 38-3-1(A), the county where a contract giving rise to an action was made or to be performed, *see id.*, or the county where the property giving rise to an action is situated, *see* Section 38-3-1(D). If an owner and a resident both reside in Sandoval County, and the property giving rise to the action under this Bill is in Sandoval County, but an owner "may be found" in Santa Fe County on a given day, venue may be proper in Santa Fe County under this Bill as drafted. Consider revision to clarify the intended effect of the venue subsection.

Relationship
HB43, introduced by Rep. Kathleen Cates, also proposes to add new material to UORRA.

HB98, introduced by Rep. Janelle Anyanonu and Rep. D. Wonda Johnson, proposes to add new material to UORRA.

TECHNICAL ISSUES
None.

OTHER SUBSTANTIVE ISSUES
None.

ALTERNATIVES
None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Status quo. Individuals affected by anticompetitive agreements may be able to seek remedy under the Antitrust Act.

AMENDMENTS
See discussion of venue in Subsection 1(C), *supra*.