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New York Restricts Use of Algorithms in Setting Residential Rents

- New York Governor Kathleen C. Hochul recently signed Assembly Bill 1417-B, adding provisions targeting the use of algorithms in residential rent setting to the Donnelly Act, the state's antitrust law.

- The New York law comes as several municipalities in other states have also targeted rent-setting algorithms and shortly after California passed broader restrictions on the use of common pricing algorithms.

Donnelly Act Amendments

New York's Donnelly Act prohibits "agreements for monopoly or in restraint of trade" in general. The new law, which will become effective as of December 15, 2025, makes explicit that certain conduct by landlords in setting rents and other lease terms for "residential dwelling units" could give rise to Donnelly Act violations. It also makes explicit that third-party entities that provide certain types of algorithms or otherwise facilitate an anticompetitive agreement among landlords also risk liability under the Donnelly Act.

Restriction on Algorithms That Use Data from Multiple Landlords

The law considers it to be an unlawful agreement in violation of the Donnelly Act for a landlord to knowingly or recklessly set rents or other lease terms "based on recommendations from a software, data analytics service, or algorithmic device performing a coordinating function." An algorithm performing a coordinating function is one that collects and processes or analyzes "historical or contemporaneous" information from multiple landlords about rents, inventory or lease termination or renewal dates, and makes recommendations about rents and other lease terms. Landlords may violate this law if they are aware that the algorithm in question uses information from multiple landlords or if they are aware that there is a substantial risk that the algorithm does so.

The law does not distinguish between the use of public and non-public information. Moreover, it appears to adopt a "per se" standard. There are no requirements for showing harm to competition or an increase in rents as a result of using the coordinating algorithm. Indeed, the law prohibits not just the use of a coordinating algorithm to set price terms (i.e., rents) but also in setting "lease renewal terms . . . or other lease terms and conditions." Landlords are also prohibited from using a coordinating algorithm to set occupancy levels.

Prohibition on Facilitating Agreements Not to Compete

The new law also generally prohibits a person or entity from facilitating an agreement by two or more landlords not to compete. An underlying agreement between landlords not to compete could itself be a Donnelly Act violation. As described above, the new law simply adds a specific prohibition on the use of coordinating algorithms.

Additionally, however, the new law also specifically prohibits a third party from using an algorithm to perform a coordinating function that competing landlords themselves could not directly undertake. The law prohibits the operation or licensing of an

algorithm that "performs a coordinating function on behalf of or between" the landlords (i.e., an algorithm that collects and processes or analyzes "historical or contemporaneous" information from multiple landlords about rents, inventory or lease termination or renewal dates, and makes recommendations about rents and other lease terms.)

Significance

Donnelly Act violations are subject to criminal and civil penalties. In addition, an individual may sue to recover treble damages for injuries sustained because of a violation. Similar conduct may also give rise to liability under the federal antitrust laws, depending on the circumstances. New York landlords should therefore review the design and deployment of any algorithms used in their leasing processes in light of recent changes in the law.

In general, algorithmic pricing is receiving a significant amount of legislative attention in addition to several pending cases across multiple jurisdictions. California recently enacted amendments to its antitrust law, the Cartwright Act, to broadly regulate the use of common pricing algorithms that affect not just prices but also "commercial terms." Several municipalities have passed laws specifically aimed at rents. A bill pending in the U.S. Senate (S.232) sponsored by Sen. Amy Klobuchar would prohibit pricing algorithms using *non-public* competitor data (while creating an audit process for users or distributors of pricing algorithms). The upshot is that companies that rely on algorithms as part of their pricing and related processes should closely monitor relevant developments in this area.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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