

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0454.01 Yelana Love x2295

SENATE BILL 17-038

SENATE SPONSORSHIP

Todd,

HOUSE SPONSORSHIP

(None),

Senate Committees

State, Veterans, & Military Affairs
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF HOME INSPECTORS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Under current law, home inspectors are not subject to regulation by any state agency. **Section 1** of the bill makes it unlawful for a person to act as a home inspector without first registering with the department of regulatory agencies (DORA).

Section 2 requires a review of the board's duties and functions in registering home inspectors after 5 years under the existing sunset laws.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 28.5 to
3 title 12 as follows:

4 **ARTICLE 28.5**

5 **Home Inspectors**

6 **12-28.5-101. Definitions.** AS USED IN THIS ARTICLE 28.5, UNLESS
7 THE CONTEXT OTHERWISE REQUIRES:

8 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF REGULATORY
9 AGENCIES.

10 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

11 (3) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND
12 OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

13 (4) "HOME INSPECTION" MEANS A LIMITED VISUAL SURVEY OF THE
14 COMPONENTS OF A RESIDENTIAL BUILDING ACCORDING TO THE
15 BOARD-APPROVED STANDARDS OF PRACTICE, WHICH COMPONENTS
16 INCLUDE: HEATING SYSTEMS; COOLING SYSTEMS; PLUMBING SYSTEMS;
17 ELECTRICAL SYSTEMS; STRUCTURAL SYSTEMS, INCLUDING EXTERIOR AND
18 INTERIOR SURFACES; FOUNDATION; AND ROOF.

19 (5) (a) "HOME INSPECTOR" MEANS A PERSON WHO IS ENGAGED IN
20 HOME INSPECTIONS.

21 (b) "HOME INSPECTOR" DOES NOT INCLUDE THE FOLLOWING
22 PROFESSIONALS ACTING WITHIN THE SCOPE OF THEIR PROFESSIONS:

23 (I) ANY PERSON REGISTERED, CERTIFIED, OR LICENSED BY THIS
24 STATE;

25 (II) ANY PERSON ACTING ON BEHALF OF THE UNITED STATES
26 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR A STATE OR
27 LOCAL HOUSING AUTHORITY;

- 1 (III) HVAC TECHNICIANS;
- 2 (IV) ROOFING CONTRACTORS;
- 3 (V) STATE, MUNICIPAL, OR COUNTY CODE INSPECTORS; OR
- 4 (VI) INDUSTRIAL HYGIENISTS AND CERTIFIED INDUSTRIAL
- 5 HYGIENISTS, AS DEFINED IN SECTION 24-30-1402.

6 (6) "HVAC TECHNICIAN" MEANS A PERSON WHO FABRICATES,
7 INSTALLS, MAINTAINS, SERVICES, OR REPAIRS WARM AIR HEATING AND
8 WATER HEATING SYSTEMS, HEAT PUMPS, COMPLETE WITH WARM AIR
9 APPLIANCES, INCLUDING BOILERS, POOL HEATERS, SPACE HEATERS,
10 DECORATIVE GAS AND SOLID-FUEL-BURNING APPLIANCES, AND GAS,
11 PROPANE, ELECTRIC, OR OIL-FIRED WATER HEATERS; VENTILATING
12 SYSTEMS COMPLETE WITH BLOWERS AND PLENUM CHAMBERS; AIR
13 CONDITIONING SYSTEMS COMPLETE WITH AIR CONDITIONING UNIT AND THE
14 DUCTS, REGISTERS, FLUES, HUMIDITY AND THERMOSTATIC CONTROLS OF
15 AIR, LIQUID OR GAS TEMPERATURES BELOW FIFTY DEGREES FAHRENHEIT
16 OR TEN DEGREES CELSIUS; AND AIR FILTERS IN CONNECTION WITH ANY OF
17 THESE SYSTEMS.

18 **12-28.5-102. Registration required - fees.** (1) A PERSON SHALL
19 NOT ENGAGE IN ACTIVITIES AS A HOME INSPECTOR, ADVERTISE IN ANY
20 PUBLICATION AS A HOME INSPECTOR, OR REPRESENT HIMSELF OR HERSELF
21 AS A HOME INSPECTOR UNLESS THE PERSON FIRST OBTAINS A
22 REGISTRATION FROM THE DIVISION AND UNLESS THE REGISTRATION IS IN
23 FULL FORCE AND EFFECT AND A COPY OF THE REGISTRATION IS IN THE
24 PERSON'S IMMEDIATE POSSESSION. A PERSON SHALL NOT CONTINUE TO ACT
25 AS A HOME INSPECTOR IF THE PERSON'S REGISTRATION HAS BEEN
26 SUSPENDED OR REVOKED OR HAS EXPIRED.

27 (2) AN APPLICANT FOR REGISTRATION AS A HOME INSPECTOR

1 SHALL FOLLOW THE PROCEDURES PROVIDED IN SECTION 12-28.5-104 AND
2 ANY OTHER PROCEDURES REQUIRED BY THE DIRECTOR. ALL APPLICANTS
3 SHALL PAY A NONREFUNDABLE REGISTRATION FEE IN AN AMOUNT
4 DETERMINED BY THE DIRECTOR, WHICH AMOUNT MUST BE ADEQUATE TO
5 COVER THE DIRECT AND INDIRECT EXPENSES INCURRED BY THE DIRECTOR
6 FOR IMPLEMENTATION OF THIS ARTICLE 28.5. THE REGISTRATION IS
7 RENEWABLE PURSUANT TO THIS ARTICLE 28.5 AND UPON PAYMENT OF THE
8 FEE.

9 **12-28.5-103. Powers and duties of the director.** (1) IN
10 ADDITION TO ALL OTHER POWERS AND DUTIES CONFERRED OR IMPOSED
11 UPON THE DIRECTOR BY THIS ARTICLE 28.5 OR BY ANY OTHER LAW, THE
12 DIRECTOR:

13 (a) MAY PROMULGATE RULES, IN ACCORDANCE WITH SECTION
14 24-4-103, TO GOVERN THE REGISTRATION OF HOME INSPECTORS AND TO
15 CARRY OUT THE PURPOSES OF THIS ARTICLE 28.5;

16 (b) (I) MAY ADMINISTER OATHS, TAKE AFFIRMATIONS OF
17 WITNESSES, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF
18 WITNESSES AND THE PRODUCTION OF ALL RELEVANT PAPERS, BOOKS,
19 RECORDS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING,
20 INVESTIGATION, ACCUSATION, OR OTHER MATTER COMING BEFORE THE
21 DIRECTOR. THE DIRECTOR OF THE DEPARTMENT OF PERSONNEL MAY
22 APPOINT AN ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF
23 ARTICLE 30 OF TITLE 24, TO PERFORM THE FUNCTIONS SET FORTH IN THIS
24 SUBSECTION (1)(b)(I) AND TO TAKE EVIDENCE AND TO MAKE FINDINGS
25 AND REPORT THEM TO THE DIRECTOR.

26 (II) UPON THE FAILURE OF ANY WITNESS TO COMPLY WITH A
27 SUBPOENA, THE DISTRICT COURT OF THE COUNTY IN WHICH THE

1 SUBPOENAED PERSON OR REGISTRANT RESIDES OR CONDUCTS BUSINESS,
2 UPON APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED
3 PERSON OR REGISTRANT, MAY ISSUE TO THE PERSON OR REGISTRANT AN
4 ORDER REQUIRING THAT PERSON OR REGISTRANT TO APPEAR BEFORE THE
5 DIRECTOR; TO PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS,
6 DOCUMENTARY EVIDENCE, OR MATERIALS IF SO ORDERED; OR TO GIVE
7 EVIDENCE RELEVANT TO THE MATTER UNDER INVESTIGATION OR IN
8 QUESTION. FAILURE TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED
9 BY THE COURT AS A CONTEMPT OF COURT.

10 (c) MAY APPLY FOR INJUNCTIVE RELIEF, IN THE MANNER PROVIDED
11 BY THE COLORADO RULES OF CIVIL PROCEDURE, TO ENFORCE THIS ARTICLE
12 28.5 OR TO RESTRAIN ANY VIOLATION OF THIS ARTICLE 28.5. IN SUCH
13 PROCEEDINGS, IT SHALL NOT BE NECESSARY TO ALLEGE OR PROVE EITHER
14 THAT AN ADEQUATE REMEDY AT LAW DOES NOT EXIST OR THAT
15 SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT FROM THE
16 CONTINUED VIOLATION OF THIS ARTICLE 28.5.

17 **12-28.5-104. Issuance of registration - violations.** (1) EXCEPT
18 AS OTHERWISE PROVIDED IN THIS ARTICLE 28.5, THE DIRECTOR SHALL
19 ISSUE AN INITIAL OR RENEWED REGISTRATION AS A HOME INSPECTOR TO
20 AN INDIVIDUAL WHO PAYS THE REQUIRED FEE AND FURNISHES EVIDENCE
21 SATISFACTORY TO THE DIRECTOR THAT THE INDIVIDUAL:

22 (a) POSSESSES MINIMUM LIABILITY INSURANCE COVERAGE IN THE
23 AMOUNT OF FIFTY THOUSAND DOLLARS FOR PERSONAL INJURY TO ONE
24 INDIVIDUAL IN A SINGLE ACCIDENT AND ONE HUNDRED THOUSAND
25 DOLLARS FOR PERSONAL INJURY TO ALL INDIVIDUALS IN A SINGLE
26 ACCIDENT;

27 (b) HAS SUBMITTED TO THE DIRECTOR A SURETY BOND IN THE

1 MINIMUM SUM OF TEN THOUSAND DOLLARS, EXECUTED BY THE APPLICANT
2 AS PRINCIPAL AND BY A SURETY COMPANY QUALIFIED AND AUTHORIZED
3 TO DO BUSINESS IN THIS STATE AS SURETY. THE BOND MUST BE
4 CONDITIONED UPON COMPLIANCE WITH THIS ARTICLE 28.5 AND WITH THE
5 RULES PROMULGATED UNDER THIS ARTICLE 28.5.

6 (2) WITH THE SUBMISSION OF AN APPLICATION FOR A
7 REGISTRATION PURSUANT TO THIS SECTION, EACH APPLICANT SHALL
8 SUBMIT A COMPLETE SET OF HIS OR HER FINGERPRINTS TO THE
9 DEPARTMENT. THE DEPARTMENT SHALL SUBMIT THE FINGERPRINTS TO THE
10 COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING
11 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE COLORADO
12 BUREAU OF INVESTIGATION SHALL FORWARD THE FINGERPRINTS TO THE
13 FEDERAL BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING
14 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE
15 DEPARTMENT MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD
16 CHECK FOR AN APPLICANT OR A REGISTRANT WHO HAS TWICE SUBMITTED
17 TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE
18 FINGERPRINTS ARE UNCLASSIFIABLE. AN APPLICANT WHO HAS PREVIOUSLY
19 SUBMITTED FINGERPRINTS FOR STATE OR LOCAL LICENSING PURPOSES MAY
20 REQUEST THE USE OF THE FINGERPRINTS ON FILE. THE DEPARTMENT SHALL
21 USE THE INFORMATION RESULTING FROM THE FINGERPRINT-BASED
22 CRIMINAL HISTORY RECORD CHECK TO INVESTIGATE AND DETERMINE
23 WHETHER AN APPLICANT IS QUALIFIED TO HOLD A REGISTRATION
24 PURSUANT TO THIS SECTION. THE DEPARTMENT MAY VERIFY THE
25 INFORMATION AN APPLICANT IS REQUIRED TO SUBMIT. THE APPLICANT
26 SHALL PAY THE COSTS ASSOCIATED WITH THE FINGERPRINT-BASED
27 CRIMINAL HISTORY RECORD CHECK TO THE COLORADO BUREAU OF

1 INVESTIGATION.

2 (3) (a) RENEWALS AND REINSTATEMENTS OF A REGISTRATION ARE
3 MADE UNDER A SCHEDULE ESTABLISHED BY THE DIRECTOR, AND
4 REGISTRATIONS MUST BE RENEWED OR REINSTATED IN ACCORDANCE WITH
5 SECTION 24-34-102 (8).

6 (b) THE DIRECTOR MAY ESTABLISH RENEWAL FEES AND
7 DELINQUENCY FEES FOR REINSTATEMENT IN ACCORDANCE WITH SECTION
8 24-34-105.

9 (c) IF A PERSON FAILS TO RENEW A REGISTRATION IN ACCORDANCE
10 WITH THE SCHEDULE ESTABLISHED BY THE DIRECTOR, THE REGISTRATION
11 EXPIRES.

12 (d) A PERSON WHOSE REGISTRATION HAS EXPIRED AND WHO
13 OFFERS OR PROVIDES HOME INSPECTION SERVICES IS SUBJECT TO THE
14 PENALTIES PROVIDED IN THIS ARTICLE 28.5 OR SECTION 24-34-102 (8).

15 **12-28.5-105. Disciplinary actions - grounds for discipline.**

16 (1) THE DIRECTOR MAY DENY, SUSPEND, REVOKE, OR PLACE ON
17 PROBATION A HOME INSPECTOR'S REGISTRATION OR ISSUE A LETTER OF
18 ADMONITION TO AN APPLICANT FOR, OR HOLDER OF, A HOME INSPECTOR'S
19 REGISTRATION IF THE APPLICANT OR HOLDER:

20 (a) VIOLATES ANY ORDER OF THE DIVISION OR THE DIRECTOR, THIS
21 ARTICLE 28.5, OR THE RULES ESTABLISHED UNDER THIS ARTICLE 28.5;

22 (b) FAILS TO MEET THE REQUIREMENTS OF SECTION 12-28.5-104 OR
23 USES FRAUD, MISREPRESENTATION, OR DECEIT IN APPLYING FOR OR
24 ATTEMPTING TO APPLY FOR REGISTRATION;

25 (c) IS CONVICTED OF OR HAS ENTERED A PLEA OF NOLO
26 CONTENDERE OR GUILTY TO A FELONY; EXCEPT THAT THE DIRECTOR SHALL
27 BE GOVERNED BY SECTION 24-5-101 IN CONSIDERING SUCH CONVICTION

1 OR PLEA;

2 (d) USES FALSE, DECEPTIVE, OR MISLEADING ADVERTISING;

3 (e) MISREPRESENTS HIS OR HER SERVICES, FACILITIES, OR
4 EQUIPMENT TO A CLIENT OR PROSPECTIVE CLIENT;

5 (f) HAS INCURRED DISCIPLINARY ACTION RELATED TO THE
6 PRACTICE OF HOME INSPECTION IN ANOTHER JURISDICTION. EVIDENCE OF
7 SUCH DISCIPLINARY ACTION IS PRIMA FACIE EVIDENCE OF A VIOLATION
8 CONSTITUTING GROUNDS FOR DENIAL OF REGISTRATION OR OTHER
9 DISCIPLINARY ACTION IF THE VIOLATION WOULD BE GROUNDS FOR SUCH
10 DISCIPLINARY ACTION IN THIS STATE.

11 (g) FAILS TO RESPOND TO A COMPLAINT AGAINST THE REGISTERED
12 HOME INSPECTOR.

13 (2) TO BE VALID, A PROCEEDING TO DENY, SUSPEND, REVOKE, OR
14 PLACE ON PROBATION A REGISTRATION MUST BE CONDUCTED IN
15 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105. THE DIRECTOR
16 MAY USE AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY THE OFFICE OF
17 ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL, AS
18 AUTHORIZED BY SECTION 12-28.5-103 (1)(b), TO CONDUCT HEARINGS.

19 (3) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
20 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES
21 NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT SHOULD NOT BE
22 DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY ISSUE AND SEND
23 A LETTER OF ADMONITION TO THE REGISTRANT.

24 (b) (I) WHEN A LETTER OF ADMONITION IS SENT BY THE DIRECTOR
25 TO A REGISTRANT, THE LETTER MUST ADVISE THE REGISTRANT THAT THE
26 REGISTRANT HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY
27 DAYS AFTER RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY

1 PROCEEDINGS BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE
2 CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED.

3 (II) IF THE REQUEST FOR ADJUDICATION IS TIMELY MADE, THE
4 LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE MATTER
5 SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

6 (4) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
7 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE
8 DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED,
9 BUT THE DIRECTOR HAS NOTICED POSSIBLE ERRANT CONDUCT BY THE
10 REGISTRANT THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT
11 CORRECTED, THE DIRECTOR MAY SEND THE REGISTRANT A CONFIDENTIAL
12 LETTER OF CONCERN.

13 (5) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN
14 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR,
15 WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY
16 A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

17 (6) IF A PERSON'S REGISTRATION IS REVOKED UNDER THIS SECTION
18 OR SURRENDERED IN LIEU OF DISCIPLINE, THE PERSON IS INELIGIBLE TO
19 SUBMIT A NEW APPLICATION FOR REGISTRATION OR REGISTER FOR TWO
20 YEARS AFTER THE DATE THE REGISTRATION IS REVOKED.

21 **12-28.5-106. Penalties - distribution of fines.** (1) ANY PERSON
22 WHO VIOLATES THIS ARTICLE 28.5 OR THE RULES OF THE DIRECTOR
23 PROMULGATED UNDER THIS ARTICLE 28.5 MAY BE PENALIZED BY THE
24 DIRECTOR UPON A FINDING OF A VIOLATION IN ACCORDANCE WITH THE
25 "STATE ADMINISTRATIVE PROCEDURES ACT", ARTICLE 4 OF TITLE 24, AS
26 FOLLOWS:

27 (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS

1 SECTION:

2 (I) IN THE FIRST ADMINISTRATIVE PROCEEDING AGAINST ANY
3 PERSON, A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS BUT NOT MORE
4 THAN FIVE HUNDRED DOLLARS PER VIOLATION;

5 (II) IN ANY SUBSEQUENT ADMINISTRATIVE PROCEEDING AGAINST
6 ANY PERSON FOR TRANSACTIONS OCCURRING AFTER A FINAL AGENCY
7 ACTION DETERMINING THAT A VIOLATION OF THIS ARTICLE 28.5 HAS
8 OCCURRED, A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS BUT NOT
9 MORE THAN TWO THOUSAND DOLLARS PER VIOLATION;

10 (b) IN AN ADMINISTRATIVE PROCEEDING AGAINST A PERSON FOR
11 A VIOLATION OF SECTION 12-28.5-102 (1), A FINE OF NOT LESS THAN ONE
12 THOUSAND DOLLARS BUT NOT MORE THAN FIVE THOUSAND DOLLARS PER
13 VIOLATION.

14 (2) IN ADDITION TO THE PENALTIES PROVIDED IN SUBSECTION (1)
15 OF THIS SECTION, THE DIRECTOR, UPON A FINDING OF A VIOLATION, MAY
16 DENY, SUSPEND, REVOKE, OR PLACE ON PROBATION A HOME INSPECTOR'S
17 REGISTRATION OR TAKE OTHER DISCIPLINARY ACTION AS PROVIDED IN
18 SECTION 12-28.5-105 (3).

19 (3) A PERSON WHO ENGAGES IN ACTIVITIES AS A HOME INSPECTOR
20 SHALL MAINTAIN, FOR THE CURRENT YEAR AND THE PRECEDING FOUR
21 YEARS, AT THE ADDRESS LISTED ON THE REGISTRATION, ALL APPLICABLE
22 DOCUMENTS, RECORDS, AND OTHER ITEMS REQUIRED TO BE MAINTAINED
23 BY THIS ARTICLE 28.5 OR BY THE RULES OF THE DIRECTOR AND SHALL
24 PERMIT THEIR INSPECTION AT REASONABLE TIMES WHEN REQUESTED TO DO
25 SO BY THE DIRECTOR OR A PEACE OFFICER. A REGISTRANT WHO REFUSES
26 TO PERMIT THE INSPECTION OF DOCUMENTS, RECORDS, OR ITEMS IS GUILTY
27 OF A MISDEMEANOR AND SHALL BE PUNISHED BY A FINE OF ONE HUNDRED

1 DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION
2 CONSTITUTES A SEPARATE VIOLATION.

3 (4) ALL FINES COLLECTED PURSUANT TO THIS ARTICLE 28.5 SHALL
4 BE DISTRIBUTED AS FOLLOWS:

5 (a) FIFTY PERCENT APPORTIONED APPROPRIATELY BY THE
6 DIRECTOR AMONG ANY FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT
7 AGENCIES ASSISTING WITH AN INVESTIGATION; AND

8 (b) FIFTY PERCENT TO THE DIVISION FOR THE COST OF
9 ADMINISTERING THIS ARTICLE 28.5.

10 **12-28.5-107. Cease-and-desist orders - unauthorized practice**

11 **- penalties.** (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON
12 CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY
13 PERSON, THAT A REGISTRANT IS ACTING IN A MANNER THAT IS AN
14 IMMINENT THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, OR A
15 PERSON IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION,
16 THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST THE ACTIVITY.
17 THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO
18 HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE
19 VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR
20 UNREGISTERED PRACTICES IMMEDIATELY CEASE.

21 (b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND
22 DESIST PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE
23 RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER
24 ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE 28.5 HAVE OCCURRED.
25 THE HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104
26 AND 24-4-105.

27 (2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE

1 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
2 A PERSON HAS VIOLATED ANY OTHER PORTION OF THIS ARTICLE 28.5,
3 THEN, IN ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS
4 ARTICLE 28.5, THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO
5 SHOW CAUSE AS TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER
6 DIRECTING THE PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT
7 OR UNREGISTERED PRACTICE.

8 (b) A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
9 BEEN ISSUED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION SHALL BE
10 PROMPTLY NOTIFIED BY THE DIRECTOR OF THE ISSUANCE OF THE ORDER,
11 ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL BASIS FOR
12 THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A HEARING ON THE
13 ORDER. THE NOTICE MAY BE SERVED BY PERSONAL SERVICE, BY
14 FIRST-CLASS UNITED STATES MAIL, POSTAGE PREPAID, OR AS MAY BE
15 PRACTICABLE UPON ANY PERSON AGAINST WHOM THE ORDER IS ISSUED.
16 PERSONAL SERVICE OR MAILING OF AN ORDER OR DOCUMENT PURSUANT
17 TO THIS SUBSECTION (2) CONSTITUTES NOTICE OF THE ORDER TO SHOW
18 CAUSE TO THE PERSON.

19 (c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE
20 COMMENCED NO SOONER THAN TEN AND NO LATER THAN FORTY-FIVE
21 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE
22 NOTIFICATION BY THE DIRECTOR AS PROVIDED IN SUBSECTION (2)(b) OF
23 THIS SECTION. THE HEARING MAY BE CONTINUED BY AGREEMENT OF ALL
24 PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF
25 PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER,
26 BUT IN NO EVENT SHALL THE HEARING COMMENCE LATER THAN SIXTY
27 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE

1 NOTIFICATION.

2 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
3 BEEN ISSUED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION DOES NOT
4 APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE THAT
5 NOTIFICATION WAS PROPERLY SENT OR SERVED UPON THE PERSON
6 PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION AND SUCH OTHER
7 EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS
8 APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS
9 AFTER THE DIRECTOR'S DETERMINATION REGARDING REASONABLE
10 ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER SHALL BECOME
11 FINAL AS TO THAT PERSON BY OPERATION OF LAW. THE HEARING SHALL BE
12 CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105.

13 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON
14 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR
15 HAS ACTED WITHOUT THE REQUIRED REGISTRATION, OR HAS OR IS ABOUT
16 TO ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS
17 ARTICLE 28.5, A FINAL CEASE-AND-DESIST ORDER MAY BE ISSUED,
18 DIRECTING THE PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL
19 ACTS OR UNREGISTERED PRACTICES.

20 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET
21 FORTH IN SUBSECTION (2)(b) OF THIS SECTION, OF THE FINAL
22 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE
23 HEARING CONDUCTED PURSUANT TO THIS SUBSECTION (2)(c) TO EACH
24 PERSON AGAINST WHOM THE ORDER WAS ISSUED. THE FINAL
25 CEASE-AND-DESIST ORDER ISSUED PURSUANT TO SUBSECTION (2)(c)(III)
26 OF THIS SECTION IS EFFECTIVE WHEN ISSUED AND CONSTITUTES A FINAL
27 ORDER FOR PURPOSES OF JUDICIAL REVIEW.

1 (3) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
2 EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED IN
3 OR IS ABOUT TO ENGAGE IN ANY UNREGISTERED ACT OR PRACTICE, ANY
4 ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE 28.5, ANY
5 RULE PROMULGATED PURSUANT TO THIS ARTICLE 28.5, ANY ORDER ISSUED
6 PURSUANT TO THIS ARTICLE 28.5, OR ANY ACT OR PRACTICE CONSTITUTING
7 GROUNDS FOR ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE
8 28.5, THE DIRECTOR MAY ENTER INTO A STIPULATION WITH SUCH PERSON.

9 (4) IF ANY PERSON FAILS TO COMPLY WITH A FINAL
10 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY
11 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE
12 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,
13 AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, SUIT FOR A
14 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO
15 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

16 (5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER
17 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF
18 THE DIRECTOR'S FINAL ORDER AS PROVIDED IN SECTION 12-28.5-110.

19 (6) ANY PERSON WHO ENGAGES OR OFFERS OR ATTEMPTS TO
20 ENGAGE IN ACTIVITIES AS A HOME INSPECTOR WITHOUT AN ACTIVE
21 REGISTRATION ISSUED UNDER THIS ARTICLE 28.5 COMMITS A CLASS 2
22 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION
23 18-1.3-501 FOR THE FIRST OFFENSE, AND FOR THE SECOND OR ANY
24 SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 6 FELONY AND
25 SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401.

26 **12-28.5-108. Immunity.** THE DIRECTOR, THE DIRECTOR'S STAFF,
27 ANY PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR,

1 ANY WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS
2 ARTICLE 28.5, AND ANY PERSON WHO FILES A COMPLAINT UNDER THIS
3 ARTICLE 28.5 IS IMMUNE FROM LIABILITY IN A CIVIL ACTION BROUGHT
4 AGAINST HIM OR HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER
5 CAPACITY AS DIRECTOR, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY,
6 IF THE PERSON WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR
7 HER RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE
8 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE
9 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS
10 WARRANTED BY THE FACTS. ANY PERSON PARTICIPATING IN GOOD FAITH
11 IN FILING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR
12 ADMINISTRATIVE PROCEEDING UNDER THIS ARTICLE 28.5 IS IMMUNE FROM
13 CIVIL OR CRIMINAL LIABILITY RESULTING FROM THE PARTICIPATION.

14 **12-28.5-109. Fees - cash fund.** EXCEPT AS OTHERWISE PROVIDED
15 IN THIS ARTICLE 28.5, ALL FEES COLLECTED PURSUANT TO THIS ARTICLE
16 28.5 SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL
17 CREDIT THEM TO THE DIVISION OF PROFESSIONS AND OCCUPATIONS CASH
18 FUND CREATED IN SECTION 24-34-105 (2)(b). THE GENERAL ASSEMBLY
19 SHALL MAKE ANNUAL APPROPRIATIONS FROM THE DIVISION OF
20 PROFESSIONS AND OCCUPATIONS CASH FUND FOR EXPENDITURES OF THE
21 DIVISION INCURRED IN THE PERFORMANCE OF ITS DUTIES UNDER THIS
22 ARTICLE 28.5.

23 **12-28.5-110. Judicial review.** THE COURT OF APPEALS HAS
24 INITIAL JURISDICTION TO REVIEW ALL FINAL ACTIONS AND ORDERS THAT
25 ARE SUBJECT TO JUDICIAL REVIEW. JUDICIAL REVIEW PROCEEDINGS SHALL
26 BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-106 (11).

27 **12-28.5-111. Repeal of article - review of functions.** THIS

1 ARTICLE 28.5 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023. BEFORE ITS
2 REPEAL, THIS ARTICLE 28.5 IS SCHEDULED FOR REVIEW IN ACCORDANCE
3 WITH SECTION 24-34-104.

4 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
5 (24)(a) introductory portion; and **add** (24)(a)(IV) as follows:

6 **24-34-104. General assembly review of regulatory agencies**
7 **and functions for repeal, continuation, or reestablishment - legislative**
8 **declaration - repeal.** (24) (a) The following agencies, functions, or both,
9 ~~with~~ ARE SCHEDULED FOR repeal on September 1, 2023:

10 (IV) THE REGULATION OF HOME INSPECTORS IN ACCORDANCE WITH
11 ARTICLE 28.5 OF TITLE 12.

12 **SECTION 3. Act subject to petition - effective date -**
13 **applicability.** (1) This act takes effect January 1, 2018; except that, if a
14 referendum petition is filed pursuant to section 1 (3) of article V of the
15 state constitution against this act or an item, section, or part of this act
16 within the ninety-day period after final adjournment of the general
17 assembly, then the act, item, section, or part will not take effect unless
18 approved by the people at the general election to be held in November
19 2018 and, in such case, will take effect on the date of the official
20 declaration of the vote thereon by the governor.

21 (2) This act applies to conduct occurring on or after the applicable
22 effective date of this act.