

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

INTRODUCED

LLS NO. 19-0008.01 Richard Sweetman x4333

HOUSE BILL 19-1170

HOUSE SPONSORSHIP

Jackson and Weissman,

SENATE SPONSORSHIP

Williams A. and Bridges,

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASING TENANT PROTECTIONS RELATING TO THE**
102 **RESIDENTIAL WARRANTY OF HABITABILITY.**

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, a warranty of habitability (warranty) is implied in every rental agreement for a residential premises, and a landlord commits a breach of the warranty (breach) if:

- ! The residential premises is uninhabitable or otherwise unfit for human habitation;
- ! The residential premises is in a condition that is materially

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

dangerous or hazardous to the tenant's life, health, or safety; and

- ! The landlord has received written notice of the condition and failed to cure the problem within a reasonable time.

The bill states that a landlord breaches the warranty if a residential premises is:

- ! Uninhabitable or otherwise unfit for human habitation or in a condition that is materially dangerous or hazardous to the tenant's life, health, or safety; and

- ! The landlord has received written or electronic notice of the condition and failed to commence remedial action by employing reasonable efforts within:

- ! 24 hours, where the condition is materially dangerous or hazardous to the tenant's life, health, or safety; or

- ! 72 hours, where the premises is uninhabitable or otherwise unfit for human habitation.

Current law provides a list of conditions that render a residential premises uninhabitable. To this list, the bill adds 2 conditions; specifically, a residential premises is uninhabitable if:

- ! The premises lacks a functioning refrigerator, range, or oven, if the landlord provides any of these appliances pursuant to the rental agreement; or

- ! There is mold that is associated with dampness, or there is any other condition causing the premises to be damp, which condition, if not remedied, would materially interfere with the health or safety of the tenant.

The bill grants to county courts and small claims courts jurisdiction to provide injunctive relief related to a breach.

Current law requires a tenant to serve written notice upon a landlord before the landlord may be held liable for a breach. The bill expands the acceptable form of such notice to include electronic notice.

The bill also:

- ! States that if a tenant gives a landlord notice of a condition that is imminently hazardous to life, health, or safety the landlord, at the request of the tenant, shall move the tenant to a reasonably comparable unit under the control of the landlord or pay for a tenant to reside in a reasonably comparable temporary living location while the condition is being remedied or repaired;

- ! Allows a tenant who satisfies certain conditions to deduct from one or more rent payments the cost to repair or remedy a condition causing a breach;

- ! Repeals the requirement that a tenant notify a local government before seeking an injunction for a breach;

- ! Repeals provisions that allow a rental agreement to require a tenant to assume certain responsibilities concerning conditions and characteristics of a premises;
- ! Prohibits a landlord from retaliating against a tenant in response to the tenant having made a good-faith complaint to the landlord or to a governmental agency alleging a condition that renders the premises uninhabitable or any condition that materially interferes with the health or safety of the tenant; and
- ! Repeals certain presumptions and specifies monetary damages that may be available to a tenant against whom a landlord retaliates.

If the same condition that substantially caused a breach recurs within 6 months after the condition is repaired or remedied, the tenant may terminate the rental agreement 14 days after providing the landlord written or electronic notice of the tenant's intent to do so.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-6-105, **amend** (1)
 3 introductory portion and (1)(f) as follows:

4 **13-6-105. Specific limits on civil jurisdiction.** (1) The county
 5 court ~~shall have~~ HAS no civil jurisdiction except that specifically
 6 conferred upon it by law. In particular, it ~~shall have~~ HAS no jurisdiction
 7 over the following matters:

8 (f) Original proceedings for the issuance of injunctions, except:

9 (I) As provided in ~~section 13-6-104(5), except~~ SECTIONS 13-6-104
 10 (5) AND 38-12-507 (1)(b);

11 (II) As required to enforce restrictive covenants on residential
 12 property and to enforce ~~the provisions of~~ section 6-1-702.5; C.R.S., and
 13 ~~except~~

14 (III) As otherwise specifically authorized in this ~~article~~ ARTICLE
 15 6 or, if there is no authorization, by rule of the Colorado supreme court.

16 **SECTION 2.** In Colorado Revised Statutes, 13-6-403, **amend** (2)

1 introductory portion, (2)(h)(III), and (2)(h)(IV); and **add** (2)(h)(V) as
2 follows:

3 **13-6-403. Jurisdiction of small claims court - limitations.**

4 (2) The small claims court ~~shall have~~ HAS no jurisdiction except that
5 specifically conferred upon it by law. In particular, it ~~shall have~~ HAS no
6 jurisdiction over the following matters:

7 (h) Actions involving injunctive relief, except as required to:

8 (III) Accomplish replevin; **and**

9 (IV) Enter judgments in actions where a party seeks to enforce a
10 contract by specific performance or to disaffirm, avoid, or rescind a
11 contract; **AND**

12 (V) ENFORCE SECTION 38-12-507 (1)(b).

13 **SECTION 3.** In Colorado Revised Statutes, 38-12-502, **add** (2.5)
14 as follows:

15 **38-12-502. Definitions.** As used in this part 5 and part 8 of this
16 article 12, unless the context otherwise requires:

17 (2.5) "ELECTRONIC NOTICE" MEANS NOTICE BY ELECTRONIC MAIL,
18 TEXT MESSAGING, OR AN ELECTRONIC PORTAL OR MANAGEMENT
19 COMMUNICATIONS SYSTEM THAT IS AVAILABLE TO BOTH A LANDLORD AND
20 A TENANT.

21 **SECTION 4.** In Colorado Revised Statutes, 38-12-503, **amend**
22 (2) and (4); and **add** (2.5) as follows:

23 **38-12-503. Warranty of habitability.** (2) A landlord breaches
24 the warranty of habitability set forth in subsection (1) of this section if:

25 (a) A residential premises is:

26 (I) Uninhabitable as described in section 38-12-505 or otherwise
27 unfit for human habitation; **and** OR

1 ~~(b)~~ (II) ~~The residential premises is~~ In a condition that is materially
2 dangerous or hazardous to the tenant's life, health, or safety; and

3 ~~(c)~~ (b) The landlord has received written OR ELECTRONIC notice
4 of the condition described in ~~paragraphs (a) and (b) of this subsection (2)~~
5 SUBSECTION (2)(a) OF THIS SECTION and failed to ~~cure the problem~~
6 COMMENCE REMEDIAL ACTION BY EMPLOYING REASONABLE EFFORTS
7 ~~within a reasonable time~~ THE FOLLOWING PERIOD AFTER RECEIVING THE
8 NOTICE:

9 (I) TWENTY-FOUR HOURS, WHERE THE CONDITION IS AS DESCRIBED
10 IN SUBSECTION (2)(a)(II) OF THIS SECTION; OR

11 (II) SEVENTY-TWO HOURS, WHERE THE CONDITION IS AS
12 DESCRIBED IN SUBSECTION (2)(a)(I) OF THIS SECTION.

13 (2.5) A LANDLORD WHO RECEIVES FROM A TENANT WRITTEN OR
14 ELECTRONIC NOTICE OF A CONDITION DESCRIBED BY SUBSECTION (2)(a) OF
15 THIS SECTION SHALL RESPOND TO THE TENANT NOT MORE THAN
16 TWENTY-FOUR HOURS AFTER RECEIVING THE NOTICE. THE RESPONSE MUST
17 INDICATE THE LANDLORD'S INTENTIONS FOR REMEDYING THE CONDITION,
18 INCLUDING AN ESTIMATE OF WHEN THE REMEDIATION WILL COMMENCE
19 AND WHEN IT WILL BE COMPLETED.

20 (4) ~~In response to~~ If the notice sent pursuant to ~~paragraph (c) of~~
21 ~~subsection (2)~~ SUBSECTION (2)(b) of this section CONCERNS A CONDITION
22 THAT IS DESCRIBED BY SUBSECTION (2)(a)(II) OF THIS SECTION, ~~a~~ THE
23 landlord, ~~may, in the landlord's discretion~~ AT THE REQUEST OF THE
24 TENANT, SHALL:

25 (a) Move ~~a~~ THE tenant to a REASONABLY comparable unit UNDER
26 THE CONTROL OF THE LANDLORD after paying the reasonable costs,
27 actually incurred, incident to the move; OR

1 (b) PAY FOR THE TENANT TO RESIDE IN A REASONABLY
2 COMPARABLE TEMPORARY LIVING LOCATION WHILE THE CONDITION IS
3 BEING REMEDIED OR REPAIRED, INCLUDING PAYING THE REASONABLE
4 COSTS, ACTUALLY INCURRED, INCIDENT TO THE MOVE.

5 **SECTION 5.** In Colorado Revised Statutes, 38-12-505, **amend**
6 (1) and (3) as follows:

7 **38-12-505. Uninhabitable residential premises.** (1) A
8 residential premises is deemed uninhabitable if:

9 (a) THERE IS MOLD THAT IS ASSOCIATED WITH DAMPNES, OR
10 THERE IS ANY OTHER CONDITION CAUSING THE PREMISES TO BE DAMP,
11 WHICH CONDITION, IF NOT REMEDIED, WOULD MATERIALLY INTERFERE
12 WITH THE HEALTH OR SAFETY OF THE TENANT; OR

13 (b) It substantially lacks any of the following characteristics:

14 (I) A FUNCTIONING REFRIGERATOR, RANGE, OR OVEN IF ANY OF
15 THESE APPLIANCES ARE PROVIDED BY THE LANDLORD PURSUANT TO THE
16 RENTAL AGREEMENT;

17 ~~(a)~~ (II) Waterproofing and weather protection of roof and exterior
18 walls maintained in good working order, including unbroken windows
19 and doors;

20 ~~(b)~~ (III) Plumbing or gas facilities that conformed to applicable
21 law in effect at the time of installation and that are maintained in good
22 working order;

23 ~~(c)~~ (IV) Running water and reasonable amounts of hot water at all
24 times furnished to appropriate fixtures and connected to a sewage
25 disposal system approved under applicable law;

26 ~~(d)~~ (V) Functioning heating facilities that conformed to applicable
27 law at the time of installation and that are maintained in good working

1 order;

2 (e) (VI) Electrical lighting, with wiring and electrical equipment
3 that conformed to applicable law at the time of installation, maintained in
4 good working order;

5 (f) (VII) Common areas and areas under the control of the
6 landlord that are kept reasonably clean, sanitary, and free from all
7 accumulations of debris, filth, rubbish, and garbage and that have
8 appropriate extermination in response to the infestation of rodents or
9 vermin;

10 (g) (VIII) Appropriate extermination in response to the infestation
11 of rodents or vermin throughout a residential premises;

12 (h) (IX) An adequate number of appropriate exterior receptacles
13 for garbage and rubbish, in good repair;

14 (i) (X) Floors, stairways, and railings maintained in good repair;

15 (j) (XI) Locks on all exterior doors and locks or security devices
16 on windows designed to be opened that are maintained in good working
17 order; or

18 (k) (XII) Compliance with all applicable building, housing, and
19 health codes, THE VIOLATION OF which ~~if violated,~~ would constitute a
20 condition that is ~~dangerous or hazardous to a tenant's life, health, or safety~~
21 MATERIALLY INTERFERES WITH THE LIFE, HEALTH, OR SAFETY OF THE
22 TENANT.

23 (3) ~~Unless otherwise stated in section 38-12-506, prior to being~~
24 BEFORE A RESIDENTIAL PREMISES IS leased to a tenant, ~~a residential~~ THE
25 premises must comply with the requirements set forth in section
26 38-12-503 (1) AND (2)(a). ~~and (2)(b).~~

27 **SECTION 6.** In Colorado Revised Statutes, **repeal** 38-12-506 as

1 follows:

2 **38-12-506. Opt-out.** ~~(1) If a dwelling unit is contained within a~~
3 ~~mobile home park, as defined in section 38-12-201.5 (3), or if there are~~
4 ~~four or fewer dwelling units sharing common walls or located on the~~
5 ~~same parcel, as defined in section 30-28-302 (5), C.R.S., all of which~~
6 ~~have the same owner, or if the dwelling unit is a single-family residential~~
7 ~~premises:~~

8 (a) ~~A good faith rental agreement may require a tenant to assume~~
9 ~~the obligation for one or more of the characteristics contained in section~~
10 ~~38-12-505 (1)(f), (1)(g), and (1)(h), as long as the requirement is not~~
11 ~~inconsistent with any obligations imposed upon a landlord by a~~
12 ~~governmental entity for the receipt of a subsidy for the residential~~
13 ~~premises; and~~

14 (b) ~~For any dwelling unit for which a landlord does not receive a~~
15 ~~subsidy from any governmental source, a landlord and tenant may agree~~
16 ~~in writing that the tenant is to perform specific repairs, maintenance tasks,~~
17 ~~alterations, and remodeling, but only if:~~

18 (I) ~~The agreement of the parties is entered into in good faith and~~
19 ~~is set forth in a separate writing signed by the parties and supported by~~
20 ~~adequate consideration;~~

21 (II) ~~The work is not necessary to cure a failure to comply with~~
22 ~~section 38-12-505 (3); and~~

23 (III) ~~Such agreement does not affect the obligation of the landlord~~
24 ~~to other tenants' residential premises.~~

25 (2) ~~For a single-family residential premises for which a landlord~~
26 ~~does not receive a subsidy from any governmental source, a landlord and~~
27 ~~tenant may agree in writing that the tenant is to perform specific repairs;~~

1 maintenance tasks, alterations, and remodeling necessary to cure a failure
2 to comply with section 38-12-505 (3), but only if:

3 (a) ~~The agreement of the landlord and tenant is entered into in~~
4 ~~good faith and is set forth in a writing that is separate from the rental~~
5 ~~agreement, signed by the parties, and supported by adequate~~
6 ~~consideration; and~~

7 (b) ~~The tenant has the requisite skills to perform the work required~~
8 ~~to cure a failure to comply with section 38-12-505 (3).~~

9 (3) ~~To the extent that performance by a tenant relates to a~~
10 ~~characteristic set forth in section 38-12-505 (1), the tenant shall assume~~
11 ~~the obligation for such characteristic.~~

12 (4) ~~If consistent with this section a tenant assumes an obligation~~
13 ~~for a characteristic set forth in section 38-12-505 (1), the lack of such~~
14 ~~characteristic shall not make a residential premises uninhabitable.~~

15 **SECTION 7.** In Colorado Revised Statutes, 38-12-507, **amend**
16 (1) introductory portion and (1)(b); and **add** (1)(e) and (3) as follows:

17 **38-12-507. Breach of warranty of habitability - tenant's**
18 **remedies.** (1) If there is a breach of the warranty of habitability as set
19 forth in section 38-12-503 (2): ~~the following provisions shall apply:~~

20 (b) (I) A tenant may obtain injunctive relief for breach of the
21 warranty of habitability in any COUNTY OR DISTRICT court of competent
22 jurisdiction. In ~~any~~ A proceeding for injunctive relief, the court shall
23 determine actual damages for a breach of the warranty at the time the
24 court orders the injunctive relief. A landlord ~~shall~~ IS not be subject to any
25 court order for injunctive relief if:

26 (A) The landlord tenders the actual damages to the court within
27 two business days ~~of~~ AFTER the order; AND

1 (B) THE PROCEEDING FOR INJUNCTIVE RELIEF DOES NOT CONCERN
2 A CONDITION DESCRIBED IN SECTION 38-12-505 (1) THAT HAS NOT BEEN
3 REPAIRED OR REMEDIED.

4 (II) Upon application by the tenant, the court shall immediately
5 release to the tenant the damages paid by the landlord. If the tenant
6 vacates the leased premises, the landlord shall not be permitted to rent the
7 premises again until ~~such time as the unit would be in compliance~~
8 COMPLIES with the warranty of habitability set forth in section 38-12-503
9 (1).

10 (e) (I) PURSUANT TO THIS SUBSECTION (1)(e), THE TENANT MAY
11 DEDUCT FROM ONE OR MORE RENT PAYMENTS THE COST OF REPAIRING OR
12 REMEDYING A CONDITION THAT IS THE BASIS OF A BREACH OF THE
13 WARRANTY OF HABITABILITY DESCRIBED IN SECTION 38-12-503, IF THE
14 TENANT PROVIDES NOTICE OF THE CONDITION TO THE LANDLORD AS
15 DESCRIBED IN SECTION 38-12-503 (2)(b) AND THE LANDLORD FAILS TO
16 COMMENCE REMEDIAL ACTION BY EMPLOYING REASONABLE EFFORTS
17 WITHIN THE APPLICABLE PERIOD DESCRIBED IN SECTION 38-12-503 (2)(b).

18 (II) AT LEAST TEN DAYS BEFORE DEDUCTING COSTS FROM A RENT
19 PAYMENT AS DESCRIBED IN THIS SUBSECTION (1)(e), A TENANT SHALL
20 PROVIDE THE LANDLORD WITH WRITTEN OR ELECTRONIC NOTICE OF THE
21 TENANT'S INTENT TO DO SO. THE NOTICE MUST SPECIFY THE DATE OF
22 NOTIFICATION, THE NAME OF THE LANDLORD OR PROPERTY MANAGER, THE
23 ADDRESS OF THE RENTAL PROPERTY, THE CONDITION THAT REQUIRES A
24 REPAIR OR REMEDY, THE DATE UPON WHICH THE TENANT PROVIDED
25 NOTICE TO THE LANDLORD OF THE CONDITION THAT REQUIRES A REPAIR OR
26 REMEDY, AND A COPY OF AT LEAST ONE ESTIMATE OF COSTS TO REPAIR OR
27 REMEDY THE CONDITION, WHICH ESTIMATE HAS BEEN PREPARED BY A

1 PROFESSIONAL WHO IS UNRELATED TO THE TENANT, IS TRAINED TO
2 PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING PREPARED, AND
3 COMPLIES WITH ALL LICENSING, CERTIFICATION, OR REGISTRATION
4 REQUIREMENTS OF THIS STATE THAT APPLY TO THE PERFORMANCE OF THE
5 WORK. A TENANT WITHHOLDING RENT OVER MULTIPLE PAYMENT PERIODS
6 IS REQUIRED TO PROVIDE NOTICE ONLY ONCE. THE TENANT SHALL RETAIN
7 A COPY OF THE NOTICE.

8 (III) AFTER A TENANT PROVIDES A LANDLORD NOTICE OF THE
9 TENANT'S INTENT TO DEDUCT COSTS PURSUANT TO SUBSECTION (1)(e)(II)
10 OF THIS SECTION, THE LANDLORD HAS TWO BUSINESS DAYS TO OBTAIN ONE
11 OR MORE ESTIMATES OF SUCH COSTS IN ADDITION TO ANY ESTIMATE THAT
12 THE TENANT INCLUDED IN THE NOTICE. THE ESTIMATE MUST BE PREPARED
13 BY A PROFESSIONAL WHO IS UNRELATED TO THE LANDLORD, IS TRAINED TO
14 PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING PREPARED, AND
15 COMPLIES WITH ALL LICENSING, CERTIFICATION, OR REGISTRATION
16 REQUIREMENTS OF THIS STATE THAT APPLY TO THE PERFORMANCE OF THE
17 WORK. IF THE LANDLORD PREFERS TO REPAIR OR REMEDY THE CONDITION
18 BY HIRING A PROFESSIONAL OTHER THAN A PROFESSIONAL WHO PREPARED
19 AN ESTIMATE FOR THE TENANT, THE LANDLORD SHALL SHARE THE
20 PREFERRED PROFESSIONAL'S ESTIMATE WITH THE TENANT.

21 (IV) IF THE LANDLORD DOES NOT OBTAIN ANY ADDITIONAL
22 ESTIMATES WITHIN THE TWO DAYS PRESCRIBED BY SUBSECTION (1)(e)(III)
23 OF THIS SECTION, THE TENANT MAY PROCEED TO DEDUCT COSTS FROM ONE
24 OR MORE RENT PAYMENTS, BASED ON THE ESTIMATE ACQUIRED BY THE
25 TENANT, UNTIL THE ENTIRE AMOUNT OF THE ESTIMATE IS DEDUCTED.

26 (V) A TENANT WHO DEDUCTS COSTS PURSUANT TO SUBSECTION
27 (1)(e)(IV) OF THIS SECTION SHALL NOT REPAIR OR REMEDY THE CONDITION

1 BUT SHALL HIRE A PROFESSIONAL WHO IS UNRELATED TO THE TENANT, IS
2 TRAINED TO PERFORM THE WORK FOR WHICH THE ESTIMATE IS BEING
3 PREPARED, AND COMPLIES WITH ALL LICENSING, CERTIFICATION, OR
4 REGISTRATION REQUIREMENTS OF THIS STATE THAT APPLY TO THE
5 PERFORMANCE OF THE WORK.

6 (VI) IF A TENANT HIRES A PROFESSIONAL TO REPAIR OR REMEDY A
7 CONDITION CAUSING A BREACH OF THE WARRANTY OF HABITABILITY AND
8 DEDUCTS THE ESTIMATED COST OF SUCH REPAIR OR REMEDY FROM ONE OR
9 MORE RENT PAYMENTS, AS PERMITTED BY THIS SUBSECTION (1)(e), AND
10 THE DEDUCTED ESTIMATED COST EXCEEDS THE ACTUAL COST INCURRED
11 BY THE TENANT, THE TENANT SHALL REMIT THE EXCESS COST TO THE
12 LANDLORD WITHIN TEN BUSINESS DAYS.

13 (VII) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION
14 (1)(e) TO THE CONTRARY, A TENANT SHALL NOT DEDUCT COSTS FROM ONE
15 OR MORE RENT PAYMENTS IF THE CONDITION THAT IS THE BASIS FOR THE
16 ALLEGED BREACH OF THE WARRANTY OF HABITABILITY IS CAUSED BY THE
17 MISCONDUCT OF THE TENANT, A MEMBER OF THE TENANT'S HOUSEHOLD,
18 A GUEST OR INVITEE OF THE TENANT, OR A PERSON UNDER THE TENANT'S
19 DIRECTION OR CONTROL; EXCEPT THAT THIS SUBSECTION (1)(e)(VII) DOES
20 NOT APPLY IF:

21 (A) THE TENANT IS A VICTIM OF DOMESTIC VIOLENCE; DOMESTIC
22 ABUSE; UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN SECTION
23 16-22-102 (9); OR STALKING;

24 (B) THE CONDITION IS THE RESULT OF DOMESTIC VIOLENCE;
25 DOMESTIC ABUSE; UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN
26 SECTION 16-22-102 (9); OR STALKING; AND

27 (C) THE LANDLORD HAS BEEN GIVEN WRITTEN OR ELECTRONIC

1 NOTICE AND EVIDENCE OF DOMESTIC VIOLENCE; DOMESTIC ABUSE;
2 UNLAWFUL SEXUAL BEHAVIOR, AS DESCRIBED IN SECTION 16-22-102 (9);
3 OR STALKING.

4 (VIII) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION
5 (1)(e) TO THE CONTRARY, A TENANT SHALL NOT DEDUCT COSTS FROM ONE
6 OR MORE RENT PAYMENTS IF THE PREMISES ARE INSPECTED PERIODICALLY
7 BY:

8 (A) THE REAL ESTATE ASSESSMENT CENTER WITHIN THE FEDERAL
9 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; OR

10 (B) A STATE OR LOCAL GOVERNMENT AGENCY CHARGED WITH THE
11 ADMINISTRATION OF THE FEDERAL HOUSING CHOICE VOUCHER PROGRAM
12 OF THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
13 DESCRIBED AT 24 CFR 982.1, ET SEQ., AND THE ENFORCEMENT OF THE
14 HOUSING QUALITY STANDARDS DESCRIBED AT 24 CFR 982.401, ET SEQ.

15 (IX) A TENANT WHO DEDUCTS COSTS FROM ONE OR MORE RENT
16 PAYMENTS IN ACCORDANCE WITH THIS SUBSECTION (1)(e) MAY SEEK
17 ADDITIONAL REMEDIES PROVIDED BY THIS SECTION.

18 (X) IF A COURT FINDS THAT A TENANT HAS WRONGFULLY
19 DEDUCTED RENT, THE COURT SHALL AWARD THE LANDLORD EITHER
20 POSSESSION OF THE PREMISES OR:

21 (A) AN AMOUNT OF MONEY EQUAL TO THE AMOUNT WRONGFULLY
22 WITHHELD; OR

23 (B) IF THE COURT FINDS THAT THE TENANT ACTED IN BAD FAITH,
24 AN AMOUNT OF MONEY EQUAL TO DOUBLE THE AMOUNT WRONGFULLY
25 WITHHELD.

26 (3) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, IF THE
27 SAME CONDITION THAT SUBSTANTIALLY CAUSED A BREACH OF THE

1 WARRANTY OF HABITABILITY RECURS WITHIN SIX MONTHS AFTER THE
2 CONDITION IS REPAIRED OR REMEDIED, THE TENANT MAY TERMINATE THE
3 RENTAL AGREEMENT FOURTEEN DAYS AFTER PROVIDING THE LANDLORD
4 WRITTEN OR ELECTRONIC NOTICE OF THE TENANT'S INTENT TO DO SO. THE
5 NOTICE MUST INCLUDE A DESCRIPTION OF THE CONDITION AND THE DATE
6 OF THE TERMINATION OF THE RENTAL AGREEMENT.

7 **SECTION 8.** In Colorado Revised Statutes, 38-12-508, **amend**
8 (4); and **repeal** (3) as follows:

9 **38-12-508. Landlord's defenses to a claim of breach of**
10 **warranty - limitations on claiming a breach.** (3) ~~A tenant may not~~
11 ~~assert a claim for injunctive relief based upon the landlord's breach of the~~
12 ~~warranty of habitability of a residential premises unless the tenant has~~
13 ~~given notice to a local government within the boundaries of which the~~
14 ~~residential premises is located of the condition underlying the breach that~~
15 ~~is materially dangerous or hazardous to the tenant's life, health, or safety.~~

16 (4) EXCEPT AS PROVIDED IN SECTION 38-12-509 (2), a tenant may
17 not assert a breach of the warranty of habitability as a defense to a
18 landlord's action for possession based upon a nonmonetary violation of
19 the rental agreement or for an action for possession based upon a notice
20 to quit or vacate.

21 **SECTION 9.** In Colorado Revised Statutes, 38-12-509, **amend**
22 (1) and (2); and **repeal** (3) and (4) as follows:

23 **38-12-509. Prohibition on retaliation.** (1) A landlord shall not
24 retaliate against a tenant ~~for alleging a breach of the warranty of~~
25 ~~habitability by discriminatorily~~ increasing rent or decreasing services or
26 by bringing or threatening to bring an action for possession in response
27 to the tenant:

1 (a) Having made a good faith complaint to the landlord or to a
2 governmental agency alleging a ~~breach of the warranty of habitability~~
3 CONDITION DESCRIBED BY SECTION 38-12-505 (1) OR ANY CONDITION
4 THAT MATERIALLY INTERFERES WITH THE LIFE, HEALTH, OR SAFETY OF THE
5 TENANT; OR

6 (b) ORGANIZING OR BECOMING A MEMBER OF A TENANTS'
7 ASSOCIATION OR SIMILAR ORGANIZATION.

8 (2) ~~A landlord shall not be liable for retaliation under this section~~
9 ~~unless a tenant proves that a landlord breached the warranty of~~
10 ~~habitability~~ IF A LANDLORD RETALIATES AGAINST A TENANT IN VIOLATION
11 OF SUBSECTION (1) OF THIS SECTION, THE TENANT MAY TERMINATE THE
12 RENTAL AGREEMENT AND RECOVER AN AMOUNT NOT MORE THAN THREE
13 MONTHS' PERIODIC RENT OR THREE TIMES THE TENANT'S ACTUAL
14 DAMAGES, WHICHEVER IS GREATER, PLUS REASONABLE ATTORNEY FEES
15 AND COSTS.

16 (3) ~~Regardless of when an action for possession of the premises~~
17 ~~where the landlord is seeking to terminate the tenancy for violation of the~~
18 ~~terms of the rental agreement is brought, there shall be a rebuttable~~
19 ~~presumption in favor of the landlord that his or her decision to terminate~~
20 ~~is not retaliatory. The presumption created by this subsection (3) cannot~~
21 ~~be rebutted by evidence of the timing alone of the landlord's initiation of~~
22 ~~the action.~~

23 (4) ~~If the landlord has a right to increase rent, to decrease service,~~
24 ~~or to terminate the tenant's tenancy at the end of any term of the rental~~
25 ~~agreement and the landlord exercises any of these rights, there shall be a~~
26 ~~rebuttable presumption that the landlord's exercise of any of these rights~~
27 ~~was not retaliatory. The presumption of this subsection (4) cannot be~~

1 ~~rebutted by evidence of the timing alone of the landlord's exercise of any~~
2 ~~of these rights.~~

3 **SECTION 10. Applicability.** This act applies to conduct
4 occurring on or after the effective date of this act.

5 **SECTION 11. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.