

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

PREAMENDED

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

LLS NO. 21-0614.01 Jane Ritter x4342

SENATE BILL 21-173

SENATE SPONSORSHIP

Gonzales and Moreno, Fenberg, Kolker, Pettersen, Story, Winter

HOUSE SPONSORSHIP

Caraveo and Gonzales-Gutierrez, Duran, Jackson, Lontine, Michaelson Jenet, Roberts,
Sirota, Woodrow

Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING RIGHTS RELATED TO RESIDENTIAL RENTAL**
102 **AGREEMENTS, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

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>.)

The bill addresses the following items related to landlord and tenant rights in residential rental agreements:

- When a landlord removes or excludes a tenant from a dwelling without resorting to proper court procedures, it is an unfair or deceptive trade practice for the purposes of the

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.

- "Colorado Consumer Protection Act";
- After a complaint is filed by a landlord, the clerk of the court or the attorney for the plaintiff shall issue a summons, including information concerning filing an answer and legal aid. A court shall not enter a default writ of restitution before the close of business on the date upon which an appearance is due.
- Provides additional details regarding the defendant's answer, including that a defendant does not waive any defense related to proper notice by filing an answer; that the court shall set a date for trial no sooner than 7 days after the answer is filed, unless the defendant agrees to waive this provision and schedule the trial for an earlier date; and in the time after an answer is filed and before a trial occurs, the court shall order that the landlord provide any documentation related to the tenancy or the current action that the defendant requests;
- Repeals language requiring the defendant, in an appeal from a judgment of a county court, to deposit with the court the amount of rent found due;
- When a court has issued a writ of restitution in a residential forcible entry and wrongful detainer (FED) proceeding, a tenant may pay any rent that is still owed to the landlord at any point up to 48 hours after a court has ordered a writ of restitution;
- Eliminates the bond requirement for the warranty of habitability and allows the tenant to assert an alleged breach of the warranty of habitability as an affirmative defense;
- Establishes allowable court procedures and remedies in cases of an alleged breach of warranty of habitability;
- Bans liquidated damage clauses that assign a cost to a party stemming from a rental violation or an eviction action;
- Prohibits rental agreements that contain one-way fee-shifting clauses that award attorney fees and court costs only to one party; and
- Guarantees parties to a residential FED dispute the right to a trial by jury.

The bill prohibits a landlord of a mobile home park or a residential premises (landlord) from:

- Charging a tenant or mobile home owner (tenant) a late fee for late payment of rent unless the rent payment is late by at least 14 calendar days;
- Charging a tenant a late fee in an amount that exceeds the greater of:

- \$20; or
- 2.5% of the amount of the rent obligation that remains past due;
- Requiring a tenant to pay a late fee unless the late fee is disclosed in the rental agreement;
- Removing, excluding, or initiating eviction procedures against a tenant solely as a result of the tenant's failure to pay one or more late fees;
- Terminating a tenancy or other estate at will or a lease in a mobile home park because the tenant fails to pay one or more late fees to the landlord;
- Imposing a late fee on a tenant for the late payment or nonpayment of any portion of the rent that a rent subsidy provider, rather than the tenant, is responsible for paying;
- Imposing a late fee more than once for each late payment;
- Requiring a tenant to pay interest on late fees;
- Recouping any amount of a late fee from a rent payment made by a tenant; or
- Charging a tenant a late fee unless the landlord provided the tenant written notice of the late fee within 180 days after the date upon which the rent payment was due.

A landlord who commits a violation must pay a \$20 penalty to an aggrieved tenant for each violation. Otherwise, a landlord who commits a violation has 7 days to cure the violation, which 7 days begins when the landlord receives notice of the violation. If a landlord fails to timely cure a violation, the tenant may bring a civil action to seek one or more of the following remedies:

- Compensatory damages for injury or loss suffered;
- A penalty of at least \$500 but not more than \$2,000 for each violation, payable to the tenant;
- Costs, including reasonable attorney fees if the tenant is the prevailing party; and
- Other equitable relief the court finds appropriate.

The attorney general may investigate and prosecute alleged violations. A violation that is not timely cured or that was committed by a landlord in bad faith is an unfair or deceptive trade practice for the purposes of the "Colorado Consumer Protection Act".

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **add**
 3 (1)(nnn) and (1)(ooo) as follows:

4 **6-1-105. Unfair or deceptive trade practices.** (1) A person

1 engages in a deceptive trade practice when, in the course of the person's
2 business, vocation, or occupation, the person:

3 (nnn) VIOLATES SECTION 38-12-510; OR

4 (ooo) VIOLATES SECTION 38-12-105.

5 **SECTION 2.** In Colorado Revised Statutes, 13-40-111, **amend**
6 (1); and **add** (5) and (6) as follows:

7 **13-40-111. Issuance and return of summons.** (1) Upon filing
8 the complaint as ~~provided~~ REQUIRED in section 13-40-110, the clerk of the
9 court or the attorney for the plaintiff shall issue a summons. The
10 summons ~~shall~~ MUST command the defendant to appear before the court
11 at a place named in ~~such~~ THE summons and at a time and on a day ~~which~~
12 ~~shall be~~ not less than seven days ~~nor~~ BUT NOT more than fourteen days
13 from the day of issuing the same to answer the complaint of plaintiff. A
14 COURT SHALL NOT ENTER A DEFAULT JUDGMENT FOR POSSESSION BEFORE
15 THE CLOSE OF BUSINESS ON THE DATE UPON WHICH AN APPEARANCE IS
16 DUE. The summons ~~shall~~ MUST also contain a statement addressed to the
17 defendant stating: "If you fail to file with the court, at or before the time
18 for appearance specified in the summons, an answer to the complaint
19 setting forth the grounds upon which you base your claim for possession
20 and denying or admitting all of the material allegations of the complaint,
21 judgment by default may be taken against you for the possession of the
22 property described in the complaint, for the rent, if any, due or to become
23 due, for present and future damages and costs, and for any other relief to
24 which the plaintiff is entitled." ~~If you are claiming that the landlord's~~
25 ~~failure to repair the residential premises is a defense to the landlord's~~
26 ~~allegation of nonpayment of rent, the court will require you to pay into the~~
27 ~~registry of the court, at the time of filing your answer, the rent due less~~

1 any expenses you have incurred based upon the landlord's failure to repair
2 the residential premises."

3 (5) A SUMMONS ISSUED PURSUANT TO THIS SECTION MUST ALSO
4 CONTAIN A LIST OF AVAILABLE RESOURCES FOR RESIDENTIAL TENANTS TO
5 OBTAIN CIVIL LEGAL AID AND RENTAL ASSISTANCE. THE DEPARTMENT OF
6 LOCAL AFFAIRS SHALL MAKE AVAILABLE AND KEEP CURRENT THE LIST OF
7 RESOURCES AVAILABLE. LOCAL GOVERNMENT ENTITIES MAY ALSO
8 PROVIDE OR SUPPLEMENT THE LIST OF RESOURCES AND PROVIDE SUCH
9 RESOURCES TO THE DEPARTMENT OF LOCAL AFFAIRS FOR PUBLICATION ON
10 ITS WEBSITE.

11 (6) A SUMMONS ISSUED PURSUANT TO THIS SECTION MUST ALSO
12 CONTAIN:

13 (a) A COPY OF A BLANK ANSWER FORM REQUIRED PURSUANT TO
14 SECTION 13-40-113; AND

15 (b) A FORM THAT ALLOWS THE DEFENDANT TO REQUEST ALL
16 DOCUMENTS IN THE LANDLORD'S POSSESSION RELATED TO _____ THE
17 CURRENT ACTION.

18 **SECTION 3.** In Colorado Revised Statutes, **amend** 13-40-113 as
19 follows:

20 **13-40-113. Answer of defendant - additional and amended**
21 **pleadings.** (1) The defendant shall file with the court, at or before the
22 time DAY specified for ~~his~~ THE DEFENDANT'S appearance in the summons,
23 an answer in writing. ~~setting~~ THE DEFENDANT'S ANSWER MUST SET forth
24 the grounds on which ~~he~~ THE DEFENDANT bases ~~his~~ THE DEFENDANT'S
25 claim for possession, ~~and~~ admitting or denying all of the material
26 allegations of the complaint, and presenting every defense which then
27 exists and upon which ~~he~~ THE DEFENDANT intends to rely, either by

1 including the same in ~~his~~ THE DEFENDANT'S answer or by ~~filing~~
2 ~~simultaneously therewith~~ SIMULTANEOUSLY FILING motions setting forth
3 every such defense.

4 (2) The court for good cause may permit the filing of additional
5 and amended pleadings ~~where such~~ IF IT will not result in A delay
6 prejudicial to the defendant.

7 (3) A DEFENDANT DOES NOT WAIVE ANY DEFENSE RELATED TO
8 PROPER NOTICE BY FILING AN ANSWER PURSUANT TO THIS SECTION.

9 (4) AFTER AN ANSWER IS PROVIDED TO THE COURT PURSUANT TO
10 THIS SECTION:

11 (a) THE COURT SHALL SET A DATE FOR TRIAL NO SOONER THAN
12 SEVEN DAYS AFTER THE ANSWER IS FILED, UNLESS THE DEFENDANT
13 REQUESTS A WAIVER OF THIS PROVISION IN THE DEFENDANT'S ANSWER OR
14 AFTER FILING AN ANSWER. THIS PROVISION DOES NOT APPLY TO A
15 FORCIBLE ENTRY AND DETAINER PETITION THAT ALLEGES A SUBSTANTIAL
16 VIOLATION, AS DEFINED IN SECTION 13-40-107.5 (3).

17 (b) IN THE TIME AFTER AN ANSWER IS FILED AND BEFORE A TRIAL
18 OCCURS, THE COURT SHALL ORDER THAT THE LANDLORD OR TENANT
19 PROVIDE ANY DOCUMENTATION RELATED TO THE CURRENT ACTION
20 THAT EITHER PARTY REQUESTS PURSUANT TO SECTION 13-40-111 (6)(b).

21 **SECTION 4.** In Colorado Revised Statutes, 13-40-115, **amend**
22 (2); and **add** (4) and (5) as follows:

23 **13-40-115. Judgment - writ of restitution - right to trial by**
24 **jury - cure period.** (2) Upon ~~such~~ A trial or further hearing ~~under this~~
25 ~~article~~ PURSUANT TO THIS ARTICLE 40 after personal service ~~is had~~ HAS
26 BEEN MADE upon the defendant in accordance with section 13-40-112 (1),
27 if the court or jury has not already tried the issue of unlawful detainer, it

1 may do so. ~~and, if it~~ IF THE COURT finds that the defendant has committed
2 an unlawful detainer, the court shall enter judgment for the plaintiff to
3 have restitution of the premises and shall issue a writ of restitution. In
4 addition to ~~such~~ THE judgment for restitution, the court or jury shall
5 further find the amount of rent, if any, due to the plaintiff from the
6 defendant at the time of trial; the amount of damages, if any, sustained by
7 the plaintiff to the time of the trial on account of the unlawful detention
8 of the property by the defendant; and damages sustained by the plaintiff
9 to the time of trial on account of injuries to the property. ~~and judgment~~
10 THE COURT shall enter JUDGMENT for such amounts, together with ANY
11 reasonable ~~attorney's~~ ATTORNEY fees and costs ~~upon which judgment~~
12 ~~execution shall issue~~ as in other civil actions. ~~Nothing in~~ This section
13 ~~shall be construed to~~ DOES NOT permit the entry of judgment in excess of
14 the COURT'S jurisdictional limit. ~~of the court.~~

15 ==

16 (4) A LANDLORD WHO PROVIDES A TENANT WITH PROPER NOTICE
17 OF NONPAYMENT SHALL ACCEPT PAYMENT OF THE TENANT'S FULL
18 PAYMENT OF ALL AMOUNTS DUE ACCORDING TO THE NOTICE, AS WELL AS
19 ANY RENT THAT REMAINS DUE UNDER THE RENTAL AGREEMENT, AT ANY
20 TIME UNTIL A JUDGE ISSUES A JUDGMENT FOR POSSESSION PURSUANT TO
21 SUBSECTION (1) OR (2) OF THIS SECTION. A TENANT MAY PAY THIS
22 AMOUNT TO EITHER THE LANDLORD OR TO THE COURT. ONCE A COURT HAS
23 CONFIRMATION THAT THE FULL AMOUNT HAS BEEN TIMELY PAID, THE
24 COURT SHALL:

25 (a) VACATE ANY JUDGMENTS THAT HAVE BEEN ISSUED; AND

26 (b) DISMISS THE ACTION WITH PREJUDICE.

27 (5) THE RIGHTS PROVIDED IN SUBSECTION (4) OF THIS SECTION

1 MAY NOT BE WAIVED BY ANY WRITTEN AGREEMENT.

2 **SECTION 5.** In Colorado Revised Statutes, 13-40-117, **amend**
3 (3) as follows:

4 **13-40-117. Appeals.** (3) If the appellee believes that ~~he~~ THE
5 APPELLEE may suffer serious economic harm during the pendency of the
6 appeal, ~~he~~ THE APPELLEE may petition the court taking the appeal to ~~order~~
7 ~~that an~~ REQUIRE THE APPELLANT TO HAVE AN additional undertaking ~~be~~
8 ~~required of the appellant~~ to cover the anticipated harm. The court shall
9 order such undertaking only after a hearing and upon a finding that the
10 appellee has shown a substantial likelihood of suffering such economic
11 harm during the pendency of the appeal and that ~~he~~ THE APPELLEE will not
12 BE adequately ~~be~~ protected under the appeals bond and the other
13 requirements for appeal pursuant to sections ~~13-40-118~~, 13-40-120 and
14 13-40-123.

15 **SECTION 6.** In Colorado Revised Statutes, **repeal** 13-40-118 as
16 follows:

17 **13-40-118. Deposit of rent.** ~~In all appeals from the judgment of~~
18 ~~a county court, in an action founded upon section 13-40-104 (1)(d), the~~
19 ~~defendant, at the time of the filing thereof, shall deposit with the court the~~
20 ~~amount of rent found due and specified in such judgment. Unless such~~
21 ~~deposit is made, the appeal is not perfected, and proceedings upon such~~
22 ~~judgment shall thereupon be had accordingly. If the appeal is perfected,~~
23 ~~the court shall transmit such deposit to the clerk of the appellate court,~~
24 ~~with the papers in such case; and the appellant thereafter, at the time~~
25 ~~when the rents become due as specified in the judgment appealed from~~
26 ~~and as often as the same become due, shall deposit the amount thereof~~
27 ~~with the clerk of such appellate court. In case the appellant, at any time~~

1 during the pendency of such appeal and before final judgment therein,
2 neglects or fails to make any deposit of rent, falling due at the time
3 specified in the judgment appealed from, the court in which such appeal
4 is pending, upon such fact being made to appear and upon motion of the
5 appellee, shall affirm the judgment appealed from with costs; and
6 proceedings thereupon shall be had as in like cases determined upon the
7 merits.

8 **SECTION 7.** In Colorado Revised Statutes, **amend** 13-40-120 as
9 follows:

10 **13-40-120. Appellate review.** Appellate review of the judgment
11 of the district courts of this state, in proceedings ~~under this article~~
12 PURSUANT TO THIS ARTICLE 40, is allowed as provided by law and the
13 Colorado appellate rules. ~~In cases of appeal from judgments founded~~
14 ~~upon causes of action embraced in section 13-40-104 (1)(d), the deposit~~
15 ~~of rent money during pendency of appeal shall be made, or judgment of~~
16 ~~affirmance shall be entered, in the manner provided in section 13-40-118.~~

17 **SECTION 8.** In Colorado Revised Statutes, 13-54-102, **amend**
18 (1)(r) as follows:

19 **13-54-102. Property exempt - definitions - repeal.** (1) The
20 following property is exempt from levy and sale under writ of attachment
21 or writ of execution:

22 (r) For purposes of garnishment proceedings pursuant to ~~the~~
23 ~~provisions of article 54.5 of this title~~ TITLE 13, any amount held by a third
24 party as a security deposit, as defined in ~~section 38-12-102 (2), C.R.S.~~
25 SECTION 38-12-102 (6), or any amount held by a third party as a utility
26 deposit to secure payment for utility goods or services used or consumed
27 by the debtor or his THE DEBTOR'S dependents;

1 **SECTION 9.** In Colorado Revised Statutes, **amend** 38-12-101 as
2 follows:

3 **38-12-101. Legislative declaration.** ~~The provisions of This part~~
4 1 shall be liberally construed to implement the intent of the general
5 assembly to ~~insure~~ ENSURE the proper administration of security deposits
6 AND LATE FEES and protect the interests of tenants, MOBILE HOME
7 OWNERS, and landlords.

8 **SECTION 10.** In Colorado Revised Statutes, **amend** 38-12-102
9 as follows:

10 **38-12-102. Definitions.** As used in this part 1, unless the context
11 otherwise requires:

12 (1) "HOME OWNER" HAS THE MEANING SET FORTH IN SECTION
13 38-12-201.5 (2).

14 (2) "LANDLORD" MEANS A LANDLORD, AS DEFINED IN SECTION
15 38-12-502 (5), OR THE MANAGEMENT OR LANDLORD OF A MOBILE HOME
16 PARK, AS DEFINED IN SECTION 38-12-201.5 (3).

17 (3) "LATE FEE" MEANS A MONETARY SUM THAT A LANDLORD
18 CHARGES A TENANT OR HOME OWNER AS A RESULT OF THE TENANT'S OR
19 HOME OWNER'S FAILURE TO TIMELY PAY RENT AND THAT IS DETERMINED
20 PURSUANT TO A RENTAL AGREEMENT BETWEEN THE LANDLORD AND THE
21 TENANT OR HOME OWNER.

22 ~~(+)~~ (4) "Normal wear and tear" means ~~that~~ deterioration ~~which~~
23 THAT occurs, based upon the use for which ~~the~~ A rental unit OR MOBILE
24 HOME SPACE is intended, without negligence, carelessness, accident, or
25 abuse of the premises or equipment or chattels by the tenant OR HOME
26 OWNER or members of ~~his~~ THE TENANT'S OR HOME OWNER'S household,
27 or their invitees or guests.

1 (5) "RENT SUBSIDY PROVIDER" MEANS A PUBLIC OR PRIVATE
2 ENTITY, INCLUDING A PUBLIC HOUSING AUTHORITY, THAT PROVIDES
3 ONGOING FINANCIAL ASSISTANCE TO A LANDLORD FOR THE PURPOSE OF
4 SUBSIDIZING RENT.

5 ~~(2)~~(6) "Security deposit" means any advance or deposit of money,
6 regardless of its denomination, the primary function of which is to secure
7 the performance of a rental agreement for A residential premises or any
8 part thereof OF A RESIDENTIAL PREMISES.

9 (7) "TENANT" HAS THE MEANING SET FORTH IN SECTION 38-12-502
10 (9).

11 **SECTION 11.** In Colorado Revised Statutes, **add** 38-12-105 as
12 follows:

13 **38-12-105. Late fees charged to tenants and mobile home**
14 **owners - maximum late fee amounts - prohibited acts - penalties -**
15 **period to cure violations - remedies - unfair or deceptive trade**
16 **practice.** (1) A LANDLORD SHALL NOT TAKE ANY OF THE FOLLOWING
17 ACTIONS OR DIRECT ANY AGENT TO TAKE ANY OF THE FOLLOWING ACTIONS
18 ON THE LANDLORD'S BEHALF:

19 (a) CHARGE A TENANT OR HOME OWNER A LATE FEE UNLESS A
20 RENT PAYMENT IS LATE BY AT LEAST FOURTEEN CALENDAR DAYS;

21 (b) CHARGE A TENANT OR HOME OWNER A LATE FEE IN AN AMOUNT
22 THAT EXCEEDS THE GREATER OF:

23 (I) TWENTY DOLLARS; OR

24 (II) TWO AND ONE-HALF PERCENT OF THE AMOUNT OF THE PAST
25 DUE RENT PAYMENT;

26 (c) REQUIRE A TENANT OR HOME OWNER TO PAY A LATE FEE
27 UNLESS THE LATE FEE IS DISCLOSED IN THE RENTAL AGREEMENT;

1 (d) REMOVE OR EXCLUDE A TENANT FROM A DWELLING OR
2 INITIATE A COURT PROCESS FOR THE REMOVAL OR EXCLUSION OF A
3 TENANT FROM A DWELLING BECAUSE THE TENANT FAILS TO PAY ONE OR
4 MORE LATE FEES TO THE LANDLORD;

5 (e) TERMINATE A TENANCY OR OTHER ESTATE AT WILL OR A LEASE
6 IN A MOBILE HOME PARK BECAUSE A TENANT OR HOME OWNER FAILS TO
7 PAY ONE OR MORE LATE FEES TO THE LANDLORD;

8 (f) IMPOSE A LATE FEE ON A TENANT OR HOME OWNER FOR THE
9 LATE PAYMENT OR NONPAYMENT OF ANY PORTION OF THE RENT THAT A
10 RENT SUBSIDY PROVIDER, RATHER THAN THE TENANT OR HOME OWNER, IS
11 RESPONSIBLE FOR PAYING;

12 (g) IMPOSE A LATE FEE MORE THAN ONCE FOR EACH LATE
13 PAYMENT, EXCEPT THAT A LANDLORD MAY IMPOSE A LATE FEE MORE THAN
14 ONCE FOR A LATE PAYMENT IF THE TOTAL AMOUNT OF SUCH LATE FEES
15 DOES NOT EXCEED THE AMOUNT DESCRIBED IN SUBSECTION (1)(b) OF THIS
16 SECTION;

17 (h) REQUIRE A TENANT OR HOME OWNER TO PAY ANY AMOUNT OF
18 INTEREST ON A LATE FEE;

19 (i) RECOUP ANY AMOUNT OF A LATE FEE FROM A RENT PAYMENT
20 MADE TO THE LANDLORD BY A TENANT OR HOME OWNER; OR

21 (j) CHARGE A TENANT OR HOME OWNER A LATE FEE UNLESS THE
22 LANDLORD PROVIDED THE TENANT OR HOME OWNER WRITTEN NOTICE OF
23 THE LATE FEE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE UPON
24 WHICH THE RENT PAYMENT WAS DUE.

25 (2) A LEASE OF A LANDLORD OR PERSON ACTING ON BEHALF OF A
26 LANDLORD THAT DOES NOT COMPLY WITH THE PROVISIONS OF SUBSECTION
27 (1) OF THIS SECTION IS VOID AND UNENFORCEABLE. A TENANT WHO IS

1 AGGRIEVED BY AN ACTION TAKEN BY A LANDLORD OR PERSON ACTING ON
2 BEHALF OF THE LANDLORD IN VIOLATION OF SUBSECTION (1) OF THIS
3 SECTION MAY BRING AN ACTION FOR INJUNCTIVE RELIEF PURSUANT TO
4 SUBSECTION (5) OF THIS SECTION.

5 (3) A LANDLORD WHO VIOLATES SUBSECTION (1) OF THIS SECTION
6 SHALL PAY TO AN AGGRIEVED TENANT A PENALTY IN THE AMOUNT OF
7 TWENTY DOLLARS FOR EACH VIOLATION.

8 (4) EXCEPT AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION,
9 AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE
10 CONTRARY, A LANDLORD WHO VIOLATES SUBSECTION (1) OF THIS SECTION
11 HAS SEVEN DAYS TO CURE THE VIOLATION, WHICH SEVEN DAYS BEGINS
12 WHEN THE LANDLORD RECEIVES WRITTEN OR ELECTRONIC NOTICE OF THE
13 VIOLATION.

14 (5) IF A LANDLORD VIOLATES SUBSECTION (1) OF THIS SECTION
15 AND FAILS TO TIMELY CURE THE VIOLATION AS DESCRIBED IN SUBSECTION
16 (4) OF THIS SECTION, A TENANT OR HOME OWNER MAY BRING A CIVIL
17 ACTION TO SEEK ONE OR MORE OF THE FOLLOWING REMEDIES:

- 18 (a) COMPENSATORY DAMAGES FOR INJURY OR LOSS SUFFERED;
- 19 (b) A PENALTY OF AT LEAST FIVE HUNDRED DOLLARS BUT NOT
20 MORE THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION, PAYABLE TO
21 THE TENANT OR HOME OWNER;
- 22 (c) COSTS, INCLUDING REASONABLE ATTORNEY FEES, IF THE
23 TENANT OR HOME OWNER IS THE PREVAILING PARTY; AND
- 24 (d) OTHER EQUITABLE RELIEF THE COURT FINDS APPROPRIATE.

25 (6) A TENANT OR HOME OWNER MAY RAISE AN ALLEGED
26 VIOLATION OF THIS SECTION AS AN AFFIRMATIVE DEFENSE IN A FORCIBLE
27 ENTRY AND DETAINER PROCEEDING.

1 (7) THE ATTORNEY GENERAL MAY INVESTIGATE AND PROSECUTE
2 ALLEGED VIOLATIONS OF SUBSECTION (1) OF THIS SECTION. A VIOLATION
3 OF SUBSECTION (1) OF THIS SECTION THAT IS NOT CURED WITHIN THE
4 PERIOD DESCRIBED IN SUBSECTION (4) OF THIS SECTION OR THAT WAS
5 COMMITTED BY THE LANDLORD IN BAD FAITH IS AN UNFAIR OR DECEPTIVE
6 TRADE PRACTICE FOR THE PURPOSES OF THE "COLORADO CONSUMER
7 PROTECTION ACT", ARTICLE 1 OF TITLE 6, AS DESCRIBED IN SECTION
8 6-1-105 (1)(nnn).

9 (8) A LATE FEE IS DISTINCT FROM RENT, AND A RENTAL
10 AGREEMENT MAY NOT CLASSIFY A LATE FEE AS RENT FOR THE PURPOSES
11 OF SECTION 13-40-104 (1)(d).

12 **SECTION 12.** In Colorado Revised Statutes, 38-12-201.5,
13 **amend** the introductory portion, (1)(d), and (1)(e); and **add** (1)(f) and
14 (2.5) as follows:

15 **38-12-201.5. Definitions.** As used in this part 2 and in part 11 of
16 this ~~title 38~~ ARTICLE 12, unless the context otherwise requires:

17 (1) "Entry fee" means any fee paid to or received from an owner
18 of a mobile home park or an agent thereof except for:

19 (d) Utilities; ~~and~~

20 (e) Incidental reasonable charges for services actually performed
21 by the mobile home park owner or the ~~home~~ MOBILE HOME PARK owner's
22 agent and agreed to in writing by the home owner; AND

23 (f) LATE FEES.

24 (2.5) "LATE FEE" HAS THE MEANING SET FORTH IN SECTION
25 38-12-102 (3).

26 **SECTION 13.** In Colorado Revised Statutes, 38-12-213, **amend**
27 (1) introductory portion, (1)(c), (1)(e), and (1)(f) as follows:

1 **38-12-213. Rental agreement - disclosure of terms in writing.**

2 (1) The MANAGEMENT SHALL ADEQUATELY DISCLOSE THE terms and
3 conditions of a tenancy ~~must be adequately disclosed~~ in writing in a rental
4 agreement ~~by the management~~ to any prospective home owner ~~prior to~~
5 BEFORE the rental or occupancy of a mobile home space or lot. ~~Said~~ THE
6 disclosures ~~shall~~ MUST include:

7 (c) The day when unpaid rent ~~shall be~~ IS considered in default FOR
8 THE PURPOSE OF ESTABLISHING A LATE FEE, WHICH DAY MAY NOT BE LESS
9 THAN FOURTEEN CALENDAR DAYS AFTER THE DAY RENT IS DUE AND
10 PAYABLE;

11 (e) The name and mailing address where a manager's decision can
12 be appealed; AND

13 (f) All charges to the home owner other than rent, INCLUDING
14 LATE FEES.

15 **SECTION 14.** In Colorado Revised Statutes, **amend** 38-12-220
16 as follows:

17 **38-12-220. Private civil right of action.** ~~Any~~ A home owner ~~who~~
18 ~~owns a home~~ in a ~~mobile home~~ park where the landlord has violated any
19 provision of this ~~article shall have~~ ARTICLE 12 HAS a private civil right of
20 action against the landlord. In any such action, EXCEPT AS DESCRIBED IN
21 SECTION 38-12-105 (4), the home owner ~~shall be~~ IS entitled to actual
22 economic damages and reasonable attorney fees and costs if the home
23 owner is successful in the action.

24 **SECTION 15.** In Colorado Revised Statutes, 38-12-507, **amend**
25 (1)(c) and (1)(d); and **add** (1)(d.5) as follows:

26 **38-12-507. Breach of warranty of habitability - tenant's**
27 **remedies.** (1) If there is a breach of the warranty of habitability as set

1 forth in section 38-12-503 (2):

2 (c) In an action for possession OR COLLECTION based upon
3 nonpayment of rent, ~~in which the tenant asserts a defense to possession~~
4 ~~based upon the landlord's alleged breach of the warranty of habitability,~~
5 ~~upon the filing of the tenant's answer the court shall order the tenant to~~
6 ~~pay into the registry of the court all or part of the rent accrued after due~~
7 ~~consideration of expenses already incurred by the tenant based upon the~~
8 ~~landlord's breach of the warranty of habitability~~ THE TENANT MAY ASSERT,
9 AS AN AFFIRMATIVE DEFENSE, AN ALLEGED BREACH OF THE WARRANTY OF
10 HABITABILITY, PROVIDED THAT THE LANDLORD OR ANY AGENT ACTING ON
11 BEHALF OF THE LANDLORD HAS PREVIOUSLY RECEIVED WRITTEN OR
12 ELECTRONIC NOTICE OF AN ALLEGED BREACH OF THE WARRANTY OF
13 HABITABILITY.

14 (d) Whether asserted as a claim, ~~or~~ counterclaim, OR AN
15 AFFIRMATIVE DEFENSE, a tenant may recover damages directly arising
16 from a breach of the warranty of habitability, which may include, but are
17 not limited to, any reduction in the fair rental value of the dwelling unit,
18 in any court of competent jurisdiction.

19 (d.5) THE COURT SHALL DETERMINE THE REDUCTION OF THE
20 PREMISE'S RENTAL VALUE IN ITS UNINHABITABLE STATE TO THE DATE OF
21 TRIAL AND SHALL DENY POSSESSION TO THE LANDLORD AND DEEM THE
22 TENANT TO BE THE PREVAILING PARTY, CONDITIONED UPON THE PAYMENT
23 OF THE RENT THAT HAS ACCRUED TO THE DATE OF THE TRIAL, AS
24 ADJUSTED PURSUANT TO THE REDUCTION IN THE RENTAL VALUE CAUSED
25 BY THE BREACH OF THE WARRANTY OF HABITABILITY. THE TENANT SHALL
26 MAKE THIS PAYMENT TO EITHER THE COURT OR THE LANDLORD WITHIN
27 FOURTEEN DAYS FROM THE DATE OF THE COURT'S JUDGMENT. THE COURT

1 MAY ORDER THE LANDLORD TO MAKE REPAIRS AND CORRECT THE
2 CONDITIONS THAT CONSTITUTE A BREACH OF THE LANDLORD'S
3 OBLIGATIONS, SHALL ORDER THAT THE MONTHLY RENT BE LIMITED TO THE
4 PREMISE'S REASONABLE RENTAL VALUE, AS DETERMINED PURSUANT TO
5 THIS SECTION, UNTIL REPAIRS ARE COMPLETED, AND SHALL AWARD THE
6 TENANT COSTS AND ATTORNEY FEES IF PROVIDED BY AND PURSUANT TO
7 ANY STATUTE OR THE CONTRACT OF THE PARTIES. IF THE COURT ORDERS
8 REPAIRS OR CORRECTIONS, OR BOTH, PURSUANT TO THIS SECTION, THE
9 COURT'S JURISDICTION CONTINUES OVER THE MATTER FOR THE PURPOSE
10 OF ENSURING COMPLIANCE. THE COURT SHALL AWARD POSSESSION OF THE
11 PREMISES TO THE LANDLORD IF THE TENANT FAILS TO PAY ALL REDUCED
12 RENT OBLIGATIONS ACCRUED TO THE DATE OF TRIAL WITHIN THE PERIOD
13 PRESCRIBED BY THE COURT PURSUANT TO THIS SUBSECTION (1)(d.5).

14 **SECTION 16.** In Colorado Revised Statutes, **amend** 38-12-510
15 as follows:

16 **38-12-510. Unlawful removal or exclusion.** (1) It ~~shall be~~ IS
17 unlawful for a landlord to remove or exclude a tenant from a dwelling
18 unit without resorting to court process, unless the removal or exclusion
19 is consistent with ~~the provisions of~~ article 18.5 of title 25 ~~C.R.S.~~, and the
20 rules promulgated by the state board of health for the cleanup of an illegal
21 drug laboratory; ~~or~~ is with the mutual consent of the landlord and tenant;
22 or unless the dwelling unit has been abandoned by the tenant, as
23 evidenced by the return of keys, the substantial removal of the tenant's
24 personal property, notice by the tenant, or the extended absence of the
25 tenant while rent remains unpaid, any of which would cause a reasonable
26 person to believe the tenant had permanently surrendered possession of
27 the dwelling unit. ~~Such~~ Unlawful removal or exclusion includes the

1 willful termination of utilities or the willful removal of doors, windows,
2 or locks to the premises other than as required for repair or maintenance.
3 If the landlord willfully and unlawfully removes the tenant from the
4 premises or willfully and unlawfully causes the termination of heat,
5 running water, hot water, electric, gas, or other essential services, the
6 tenant may seek any remedy available under the law, including this part
7 5.

8 (2) A TENANT AFFECTED BY ANY VIOLATION OF THIS SECTION MAY
9 BRING A CIVIL ACTION TO RESTRAIN FURTHER VIOLATIONS AND TO
10 RECOVER DAMAGES, COSTS, AND REASONABLE ATTORNEY FEES. IN THE
11 CASE OF A VIOLATION, THE TENANT MUST BE AWARDED STATUTORY
12 DAMAGES EQUAL TO THE TENANT'S ACTUAL DAMAGES AND THE HIGHER
13 AMOUNT OF EITHER THREE TIMES THE MONTHLY RENT OR FIVE THOUSAND
14 DOLLARS, AS WELL AS ANY OTHER DAMAGES, ATTORNEY FEES, AND COSTS
15 THAT MAY BE OWED.

16 (3) A COURT MAY ALSO ORDER THAT POSSESSION BE RESTORED TO
17 A TENANT WHO WAS AFFECTED BY A VIOLATION OF THIS SECTION.

18 (4) A VIOLATION OF THIS SECTION IS AN UNFAIR OR DECEPTIVE
19 TRADE PRACTICE FOR THE PURPOSES OF THE "COLORADO CONSUMER
20 PROTECTION ACT", ESTABLISHED IN PART 1 OF ARTICLE 1 OF TITLE 6, AND
21 SECTION 6-1-105.

22 **SECTION 17.** In Colorado Revised Statutes, 38-12-801, **add** (3)
23 as follows:

24 **38-12-801. Written rental agreement - prohibited clauses -**
25 **copy - tenant.** (3) A WRITTEN RENTAL AGREEMENT MUST NOT INCLUDE:

26 (a) A LIQUIDATED DAMAGES CLAUSE THAT ASSIGNS A COST TO A
27 PARTY STEMMING FROM AN EVICTION NOTICE OR AN EVICTION ACTION

1 FROM A VIOLATION OF THE RENTAL AGREEMENT; OR

2 (b) A ONE-WAY, FEE-SHIFTING CLAUSE THAT AWARDS ATTORNEY
3 FEES AND COURT COSTS ONLY TO ONE PARTY. ANY FEE-SHIFTING CLAUSE
4 CONTAINED IN A RENTAL AGREEMENT MUST AWARD ATTORNEY FEES TO
5 THE PREVAILING PARTY IN A COURT DISPUTE CONCERNING THE RENTAL
6 AGREEMENT, RESIDENTIAL PREMISES, OR DWELLING UNIT.

7 (c) ANY CLAUSE IN VIOLATION OF SUBSECTION (3)(a) OR (3)(b) OF
8 THIS SECTION IS NULL AND VOID AND UNENFORCEABLE.

9 **SECTION 18. Appropriation.** For the 2021-22 state fiscal year,
10 \$21,339 is appropriated to the judicial department. This appropriation is
11 from the general fund and is based on an assumption that the department
12 will require an additional 0.3 FTE. To implement this act, the department
13 may use this appropriation for trial court programs.

14 **SECTION 19. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly; except
17 that, if a referendum petition is filed pursuant to section 1 (3) of article V
18 of the state constitution against this act or an item, section, or part of this
19 act within such period, then the act, item, section, or part will not take
20 effect unless approved by the people at the general election to be held in
21 November 2022 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.