

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0848.02 Christopher McMichael x4775

HOUSE BILL 23-1254

HOUSE SPONSORSHIP

Brown and Mabrey,

SENATE SPONSORSHIP

Cutter,

House Committees

Transportation, Housing & Local Government
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONDITIONS COVERED UNDER THE WARRANTY OF**
102 **HABITABILITY FOR RESIDENTIAL PREMISES, AND, IN**
103 **CONNECTION THEREWITH, SPECIFYING A LANDLORD'S**
104 **REQUIREMENTS TO REMEDIATE A RESIDENTIAL PREMISES THAT**
105 **IS DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH**
106 **EVENT, EXPANDING WHAT CONSTITUTES RETALIATION BY A**
107 **LANDLORD, AND DESCRIBING SITUATIONS IN WHICH A TENANT**
108 **MAY TERMINATE A LEASE AFTER THE PREMISES HAS BEEN**
109 **DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT.**

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

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

HOUSE
Amended 2nd Reading
April 21, 2023

applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill expands conditions covered under the warranty of habitability for residential premises in relation to indoor air quality, water quality, and other health and safety issues. The bill adds water damage, fire damage, and damage due to a natural or an environmental event as conditions under which a residential premises is deemed uninhabitable.

The bill requires a landlord to have a residential premises inspected and tested by a certified industrial hygienist or an industrial hygienist to determine if the premises is safe for habitability. The bill also clarifies landlord responsibilities in remediating a residential premises to a habitable standard and how a tenant must give notice to a landlord if there are habitability issues with the tenant's residence.

The bill directs the executive director of the department of public health and environment to establish health and safety standards for habitability by January 1, 2026.

The bill prohibits a landlord from retaliating against a tenant for making a good faith complaint about the conditions of the residential premises and provides conditions by which a tenant may terminate a lease if a habitability issue is not remediated.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Colorado has experienced record-breaking wildfires in recent
5 years, including the Marshall fire, which burned over 6,000 acres and
6 nearly 1,100 homes in a highly urbanized area, resulting in more than
7 \$500 million in damages;

8 (b) After the Marshall fire, many renters struggled to secure safe,
9 habitable housing due to significant damage from smoke, ash, and other
10 air contaminants;

11 (c) It is typical for nearby residents to have concerns about the
12 habitability of their residential premises after being subjected to an
13 environmental public health event;

1 (d) After an environmental public health event, residential
2 premises must be returned to a condition that protects the health and
3 safety of residents from environmental contaminants, such as smoke, ash,
4 and other toxic materials related to an environmental public health event;
5 and

6 (e) There is a need to promote the remediation of residential
7 premises so that landlords, tenants, and insurance companies understand
8 what remediation must be done and who is responsible for the
9 remediation to make the premises habitable after an environmental public
10 health event.

11 (2) Therefore, the general assembly declares that it is in the best
12 interest of Colorado residents to protect the health and safety of residents
13 by ensuring that their homes are returned to a healthy, habitable, and safe
14 condition after incurring damage due to an environmental public health
15 event.

16 **SECTION 2.** In Colorado Revised Statutes, 38-12-502, **add** (4.5)
17 and (10) as follows:

18 **38-12-502. Definitions.** As used in this part 5 and part 8 of this
19 article 12, unless the context otherwise requires:

20 (4.5) "ENVIRONMENTAL PUBLIC HEALTH EVENT" MEANS A
21 NATURAL DISASTER OR AN ENVIRONMENTAL EVENT, SUCH AS A WILDFIRE,
22 A FLOOD, OR A RELEASE OF TOXIC CONTAMINANTS, THAT COULD CREATE
23 NEGATIVE HEALTH AND SAFETY IMPACTS FOR TENANTS THAT LIVE IN
24 NEARBY RESIDENTIAL PREMISES.

25 (10) "VULNERABLE POPULATION" MEANS CHILDREN, INDIVIDUALS
26 WITH ASTHMA, INDIVIDUALS WITH DISABILITIES, INDIVIDUALS WHO ARE
27 PREGNANT, OR ANY OTHER GROUP OF INDIVIDUALS THAT HAS HEALTH

1 CONDITIONS THAT COULD MAKE THE INDIVIDUALS MORE SUSCEPTIBLE TO
2 ENVIRONMENTAL CONTAMINANTS.

3 **SECTION 3.** In Colorado Revised Statutes, 38-12-503, **amend**
4 (2)(a), (2.3), (2.5), and (4)(a) introductory portion; and **add** (2.7) as
5 follows:

6 **38-12-503. Warranty of habitability - notice - landlord**
7 **obligations.** (2) Except as described in subsection (2.2) of this section,
8 a landlord breaches the warranty of habitability set forth in subsection (1)
9 of this section if:

10 (a) A residential premises is:

11 (I) Uninhabitable as described in section 38-12-505 or otherwise
12 unfit for human habitation; ~~or~~

13 (II) In a condition that materially interferes with the tenant's life,
14 health, or safety; ~~and~~ OR

15 (III) NOT IN COMPLIANCE WITH THE STANDARDS DESCRIBED IN
16 SECTION 38-12-505 (1)(b)(XIII) FOR THE REMEDIATION AND CLEAN UP OF
17 A RESIDENTIAL PREMISES THAT HAS BEEN DAMAGED DUE TO AN
18 ENVIRONMENTAL PUBLIC HEALTH EVENT; AND

19 (2.3) A tenant who gives a landlord ~~WRITTEN OR~~ electronic notice
20 of a condition shall send ~~such~~ THE notice ~~only to the e-mail address,~~
21 ~~phone number, or electronic portal specified by the landlord in the rental~~
22 ~~agreement for communications. In the absence of such a provision in the~~
23 ~~rental agreement, the tenant shall communicate with the landlord in a~~
24 ~~manner that the landlord has previously used~~ TYPICALLY USES to
25 communicate with the tenant. The tenant shall retain sufficient proof of
26 delivery of the ~~electronic~~ notice.

27 (2.5) A landlord ~~who~~ THAT receives from a tenant written or

1 electronic notice of a condition described by subsection (2)(a) of this
2 section shall:

3 (a) Respond to the tenant not more than twenty-four hours after
4 receiving the notice; EXCEPT THAT A LANDLORD MAY TAKE UP TO
5 SEVENTY-TWO HOURS TO RESPOND TO THE TENANT AFTER RECEIVING THE
6 NOTICE WHEN THE RESIDENTIAL PREMISES IS INACCESSIBLE BECAUSE OF
7 DAMAGE DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT. The
8 response must indicate the landlord's intentions for remedying the
9 condition, including an estimate of when the remediation will commence
10 and when it will be completed.

11 (b) INFORM THE TENANT OF THE LANDLORD'S RESPONSIBILITIES
12 UNDER SUBSECTION (4)(a) OF THIS SECTION IF THE REPORTED CONDITION
13 CONCERNS A CONDITION DESCRIBED IN SUBSECTION (2)(a)(II) OR
14 (2)(a)(III) OF THIS SECTION.

15 (2.7) (a) A LANDLORD THAT RECEIVES NOTICE FROM A TENANT OF
16 ANY HABITABILITY ISSUES, AS DESCRIBED IN SECTION 38-12-505 (1), WITH
17 THE TENANT'S PREMISES IS RESPONSIBLE FOR REMEDIATION OF THE
18 RESIDENTIAL PREMISES TO A HABITABLE STANDARD AT THE LANDLORD'S
19 EXPENSE.

20 (b) A LANDLORD THAT RECEIVES NOTICE FROM A TENANT OF A
21 HABITABILITY ISSUE REGARDING A RESIDENTIAL PREMISES THAT HAS BEEN
22 DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT SHALL
23 COMPLY WITH THE STANDARDS DESCRIBED IN SECTION 38-12-505
24 (1)(b)(XIII) WITHIN A REASONABLE AMOUNT OF TIME GIVEN THE
25 CONDITION OF THE PREMISES AND AT THE LANDLORD'S EXPENSE.

26 (c) A LANDLORD THAT HAS REMEDIATED A RESIDENTIAL PREMISES
27 TO A HABITABLE STANDARD FOLLOWING AN ENVIRONMENTAL PUBLIC

1 HEALTH EVENT MUST PROVIDE THE TENANT WITH DOCUMENTATION THAT
2 DEMONSTRATES COMPLIANCE WITH THE STANDARDS DESCRIBED IN
3 SECTION 38-12-505 (1)(b)(XIII).

4 (d) A LANDLORD'S SUBMISSION OF AN INSURANCE CLAIM FOR AN
5 UNINHABITABLE OR A CONTAMINATED RESIDENTIAL PREMISES AFTER THE
6 LANDLORD RECEIVES NOTICE FROM THE TENANT OF HABITABILITY ISSUES
7 AT THE RESIDENTIAL PREMISES IS NOT CONSIDERED EVIDENCE OF
8 REMEDIATION.

9 (4) (a) If the notice sent pursuant to subsection (2)(b) of this
10 section concerns a condition that is described by subsection (2)(a)(II) OR
11 (2)(a)(III) of this section, the landlord, at the request of the tenant, shall
12 provide the tenant:

13 **SECTION 4.** In Colorado Revised Statutes, 38-12-505, **amend**
14 (1)(b)(XI), (1)(b)(XII), and (3); and **add** (1)(b)(XIII) as follows:

15 **38-12-505. Uninhabitable residential premises - habitability**
16 **procedures - rules.** (1) A residential premises is deemed uninhabitable
17 if:

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

19 (XI) Locks on all exterior doors and locks or security devices on
20 windows designed to be opened that are maintained in good working
21 order; ~~or~~

22 (XII) Compliance with all applicable building, housing, and health
23 codes, the violation of which would constitute a condition that materially
24 interferes with the life, health, or safety of the tenant; OR

25 (XIII) COMPLIANCE WITH APPLICABLE STANDARDS FROM THE
26 AMERICAN NATIONAL STANDARDS INSTITUTE, OR ITS SUCCESSOR
27 ORGANIZATION, FOR THE REMEDIATION AND CLEAN UP OF A RESIDENTIAL

1 PREMISES FOLLOWING AN ENVIRONMENTAL PUBLIC HEALTH EVENT.

2 (3) ~~Unless the rental agreement provides otherwise as permitted~~
3 ~~by section 38-12-506, Before a LANDLORD LEASES A residential premises~~
4 ~~is leased to a tenant, the LANDLORD MUST ENSURE THAT THE residential~~
5 ~~premises must comply with the requirements set forth in IS FIT FOR~~
6 ~~HUMAN HABITATION IN ACCORDANCE WITH section 38-12-503 (1) and~~
7 ~~(2)(a) THAT THE RESIDENTIAL PREMISES IS NOT IN A CONDITION DESCRIBED~~
8 ~~IN SECTION 38-12-503 (2)(a).~~

9 **SECTION 5.** In Colorado Revised Statutes, 38-12-506, **add (3)**
10 **as follows:**

11 **38-12-506. Exception for certain single-family residences.**

12 (3) NOTWITHSTANDING SUBSECTIONS (1) AND (2) OF THIS SECTION, A
13 LANDLORD AND TENANT SHALL NOT ENTER INTO AN AGREEMENT FOR THE
14 REPAIR, MAINTENANCE, ALTERATION, REMODELING, OR REMEDIATION OF
15 A RESIDENTIAL PREMISES THAT IS NECESSARY TO COMPLY WITH SECTION
16 38-12-503 THAT WOULD ENDANGER THE HEALTH OR SAFETY OF THE
17 TENANT.

18 **SECTION 6.** In Colorado Revised Statutes, 38-12-507, **amend**
19 **(1)(b)(I)(B); and add (4) and (5) as follows:**

20 **38-12-507. Breach of warranty of habitability - tenant's**
21 **remedies.** (1) If there is a breach of the warranty of habitability as set
22 forth in section 38-12-503 (2):

23 (b) (I) A tenant may obtain injunctive relief for breach of the
24 warranty of habitability in any county or district court of competent
25 jurisdiction. In a proceeding for injunctive relief, the court shall
26 determine actual damages for a breach of the warranty at the time the
27 court orders the injunctive relief. A landlord is not subject to any court

1 order for injunctive relief if:

2 (B) The proceeding for injunctive relief does not concern a
3 condition described in section 38-12-503 (2)(a)(II) OR (2)(a)(III) that has
4 not been repaired or remedied.

5 (4) IF A RESIDENTIAL PREMISES IS UNINHABITABLE PURSUANT TO
6 SECTION 38-12-505 (1) AFTER BEING DAMAGED DUE TO AN
7 ENVIRONMENTAL PUBLIC HEALTH EVENT, THE TENANT MAY TERMINATE
8 THE TENANT'S LEASE IF:

9 (a) THE LANDLORD HAS NOT BEEN ABLE TO REMEDIATE THE
10 CONDITIONS OF THE RESIDENTIAL PREMISES SO THAT IT IS SAFE FOR
11 HABITABILITY WITHIN SIXTY BUSINESS DAYS AFTER THE LANDLORD HAS
12 RECEIVED NOTICE OF THE HABITABILITY ISSUE FROM THE TENANT;

13 (b) THE TENANT HAS GIVEN THE LANDLORD WRITTEN OR
14 ELECTRONIC NOTICE THAT THE RESIDENTIAL PREMISES IS NOT SAFE FOR
15 HABITABILITY DUE TO DAMAGE FROM AN ENVIRONMENTAL PUBLIC HEALTH
16 EVENT; AND

17 (c) THE LANDLORD IS NOT ABLE TO PROVIDE ADEQUATE
18 ALTERNATIVE HOUSING ACCOMMODATIONS FOR THE TENANT, PURSUANT
19 TO SECTION 38-12-503 (4), FOR THE DURATION OF THE TIME THAT THE
20 RESIDENTIAL PREMISES IS BEING REMEDIATED.

21 (5) NOTWITHSTANDING SUBSECTION (4) OF THIS SECTION, IF A
22 TENANT IS A MEMBER OF A VULNERABLE POPULATION, THE TENANT MAY
23 TERMINATE THE TENANT'S LEASE OR AGREEMENT AFTER THE RESIDENTIAL
24 PREMISES HAS BEEN DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC
25 HEALTH EVENT IF:

26 (a) THE TENANT HAS GIVEN THE LANDLORD WRITTEN OR
27 ELECTRONIC NOTICE THAT THE RESIDENTIAL PREMISES IS NOT SAFE FOR

1 HABITABILITY DUE TO DAMAGE FROM AN ENVIRONMENTAL PUBLIC HEALTH
2 EVENT;

3 (b) THE LANDLORD HAS NOT BEEN ABLE TO REMEDIATE THE
4 CONDITIONS OF THE RESIDENTIAL PREMISES SO THAT IT IS SAFE FOR
5 HABITABILITY FOR THE TENANT WHO IS A MEMBER OF A VULNERABLE
6 POPULATION;

7 (c) THE LANDLORD IS NOT ABLE TO PROVIDE ADEQUATE
8 ALTERNATIVE HOUSING ACCOMMODATIONS FOR THE TENANT, PURSUANT
9 TO SECTION 38-12-503 (4), FOR THE DURATION OF THE TIME THAT THE
10 RESIDENTIAL PREMISES IS BEING REMEDIATED; AND

11 (d) THE TENANT PROVIDES THE LANDLORD WITH EVIDENCE FROM
12 A LICENSED MEDICAL DOCTOR THAT THE TENANT'S CONDITION IS SUCH
13 THAT TO CONTINUE LIVING IN A RESIDENTIAL PREMISES THAT HAS BEEN
14 DAMAGED DUE TO AN ENVIRONMENTAL PUBLIC HEALTH EVENT WOULD BE
15 DETRIMENTAL TO THE TENANT'S HEALTH, SAFETY, OR QUALITY OF LIFE.

16 **SECTION 7.** In Colorado Revised Statutes, 38-12-509, **amend**
17 (1); and **add** (1.5) as follows:

18 **38-12-509. Prohibition on retaliation.** (1) (a) A landlord shall
19 not retaliate against a tenant by ~~increasing rent or decreasing services or~~
20 ~~by bringing or threatening to bring an action for possession~~ ENGAGING IN
21 ANY OF THE ACTIVITIES SPECIFIED IN SUBSECTION (1)(b) OF THIS SECTION
22 in response to the tenant:

23 (a) (I) Having made a good faith complaint to the landlord or to
24 a governmental agency alleging a condition described by section
25 38-12-505 (1) or any condition that materially interferes with the life,
26 health, or safety of the tenant; or

27 (b) (II) Organizing or becoming a member of a tenants'

1 association or similar organization.

2 (b) PROHIBITED RETALIATION INCLUDES:

3 (I) INCREASING RENT OR DECREASING SERVICES;

4 (II) TERMINATING A LEASE OR CONTRACT WITHOUT WRITTEN
5 CONSENT OF THE TENANT EXCEPT AS OTHERWISE PROVIDED BY LAW;

6 (III) BRINGING OR THREATENING TO BRING AN ACTION FOR
7 POSSESSION; OR

8 (IV) TAKING ACTION THAT IN ANY MANNER INTIMIDATES,
9 THREATENS, DISCRIMINATES, OR RETALIATES AGAINST A TENANT.

10 (1.5) A TENANT MAY ASSERT AS A DEFENSE TO A LANDLORD'S
11 ACTION FOR POSSESSION, INCLUDING AN ACTION FOR POSSESSION BASED
12 ON A NONMONETARY VIOLATION OF THE RENTAL AGREEMENT OR AN
13 ACTION FOR POSSESSION BASED UPON A NOTICE TO QUIT OR VACATE, THAT
14 THE LANDLORD RETALIATED AGAINST THE TENANT IN VIOLATION OF
15 SUBSECTION (1) OF THIS SECTION.

16 **SECTION 8. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, or safety.