

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0614.01 Jane Ritter x4342

SENATE BILL 21-173

SENATE SPONSORSHIP

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Senate Committees
State, Veterans, & Military Affairs
Appropriations

House Committees
Business Affairs & Labor
Appropriations

HOUSE
3rd Reading Unamended
June 3, 2021

A BILL FOR AN ACT

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

HOUSE
Amended 2nd Reading
June 1, 2021

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>.)

SENATE
Amended 3rd Reading
April 14, 2021

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

SENATE
Amended 2nd Reading
April 13, 2021

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

3 **SECTION 1.** In Colorado Revised Statutes, 13-40-111, **amend**

4 (1); and **add** (5) and (6) as follows:

25 (5) A SUMMONS ISSUED PURSUANT TO THIS SECTION MUST ALSO
26 CONTAIN A LIST OF AVAILABLE RESOURCES WITH A WEBSITE LINK AND
27 PHONE NUMBER FOR RESIDENTIAL TENANTS TO OBTAIN CIVIL LEGAL AID

1 AND RENTAL ASSISTANCE. THE DEPARTMENT OF LOCAL AFFAIRS SHALL
2 MAKE AVAILABLE AND KEEP CURRENT THE LIST OF RESOURCES
3 AVAILABLE. LOCAL GOVERNMENT ENTITIES MAY ALSO PROVIDE OR
4 SUPPLEMENT THE LIST OF RESOURCES AND PROVIDE SUCH RESOURCES TO
5 THE DEPARTMENT OF LOCAL AFFAIRS FOR PUBLICATION ON ITS WEBSITE.

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

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

10 (b) A FORM THAT ALLOWS EITHER PARTY TO REQUEST ALL
11 DOCUMENTS IN THE LANDLORD'S AND TENANT'S POSSESSION RELEVANT TO
12 THE CURRENT ACTION.

13 **SECTION 2.** In Colorado Revised Statutes, **amend** 13-40-113 as
14 follows:

15 **13-40-113. Answer of defendant - additional and amended**
16 **pleadings.** (1) The defendant shall file with the court, at or before the
17 time DAY specified for his THE DEFENDANT'S appearance in the summons,
18 an answer in writing. setting THE DEFENDANT'S ANSWER MUST SET forth
19 the grounds on which he THE DEFENDANT bases his THE DEFENDANT'S
20 claim for possession, and admitting or denying all of the material
21 allegations of the complaint, and presenting every defense which then
22 exists and upon which he THE DEFENDANT intends to rely, either by
23 including the same in his THE DEFENDANT'S answer or by filin
24 simultaneously therewith SIMULTANEOUSLY FILING motions setting forth
25 every such defense.

26 (2) The court for good cause may permit the filing of additional
27 and amended pleadings where such IF IT will not result in a delay

prejudicial to the defendant.

(3) A DEFENDANT DOES NOT WAIVE ANY DEFENSE RELATED TO PROPER NOTICE BY FILING AN ANSWER PURSUANT TO THIS SECTION. A DEFENDANT CAN RAISE A DEFENSE RELATED TO PROPER NOTICE IN THE DEFENDANT'S ANSWER OR BY FILING A MOTION PREHEARING. A DEFENDANT CANNOT RAISE THIS DEFENSE FOR THE FIRST TIME AT THE HEARING IF THE DEFENDANT FAILED TO RAISE IT IN THE DEFENDANT'S ANSWER OR IN A PREHEARING MOTION.

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, BUT NOT MORE THAN TEN, DAYS AFTER THE ANSWER IS FILED,
13 UNLESS THE DEFENDANT REQUESTS A WAIVER OF THIS REQUIREMENT IN
14 THE DEFENDANT'S ANSWER OR AFTER FILING AN ANSWER; EXCEPT THAT A
15 COURT MAY EXTEND BEYOND TEN DAYS IF EITHER PARTY DEMONSTRATES
16 GOOD CAUSE FOR AN EXTENSION OR IF THE COURT OTHERWISE FINDS
17 JUSTIFICATION FOR THE EXTENSION. THE REQUIREMENT SET FORTH IN THIS
18 SUBSECTION (4)(a) DOES NOT APPLY TO A FORCIBLE ENTRY AND DETAINER
19 PETITION THAT ALLEGES A SUBSTANTIAL VIOLATION, AS DEFINED IN
20 SECTION 13-40-107.5 (3), OR TERMINATES A TENANCY PURSUANT TO
21 SECTION 38-12-203 (1)(f).

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

26 **SECTION 3.** In Colorado Revised Statutes, 13-40-115, amend
27 (2); and **add** (4) and (5) as follows:

1 **13-40-115. Judgment - writ of restitution - cure period.**

2 (2) Upon such A trial or further hearing ~~under this article~~ PURSUANT
3 TO THIS ARTICLE 40 after personal service ~~is had~~ HAS BEEN MADE upon the
4 defendant in accordance with section 13-40-112 (1), if the court or jury
5 has not already tried the issue of unlawful detainer, it may do so. ~~and, if~~
6 it IF THE COURT finds that the defendant has committed an unlawful
7 detainer, the court shall enter judgment for the plaintiff to have restitution
8 of the premises and shall issue a writ of restitution. In addition to ~~such~~
9 THE judgment for restitution, the court or jury shall further find the
10 amount of rent, if any, due to the plaintiff from the defendant at the time
11 of trial; the amount of damages, if any, sustained by the plaintiff to the
12 time of the trial on account of the unlawful detention of the property by
13 the defendant; and damages sustained by the plaintiff to the time of trial
14 on account of injuries to the property. ~~and judgment~~ THE COURT shall
15 enter JUDGMENT for such amounts, together with ANY reasonable
16 attorney's ATTORNEY fees and costs ~~upon which judgment execution shall~~
17 issue as in other civil actions. ~~Nothing in~~ This section ~~shall be construed~~
18 to DOES NOT permit the entry of judgment in excess of the COURT's
19 jurisdictional limit. ~~of the court~~

20 =

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

1 CONFIRMATION THAT THE FULL AMOUNT HAS BEEN TIMELY PAID, THE
2 COURT SHALL:

3 (a) VACATE ANY JUDGMENTS THAT HAVE BEEN ISSUED; AND
4 (b) DISMISS THE ACTION WITH PREJUDICE.

5 (5) THE RIGHTS PROVIDED IN SUBSECTION (4) OF THIS SECTION
6 MAY NOT BE WAIVED BY ANY WRITTEN AGREEMENT.

7 **SECTION 4.** In Colorado Revised Statutes, 13-40-117, **amend**
8 (3) as follows:

9 **13-40-117. Appeals.** (3) If the appellee believes that ~~he~~ THE
10 APPELLEE may suffer serious economic harm during the pendency of the
11 appeal, ~~he~~ THE APPELLEE may petition the court taking the appeal to ~~order~~
12 ~~that an~~ REQUIRE THE APPELLANT TO HAVE AN additional undertaking ~~be~~
13 ~~required of the appellant~~ to cover the anticipated harm. The court shall
14 order such undertaking only after a hearing and upon a finding that the
15 appellee has shown a substantial likelihood of suffering such economic
16 harm during the pendency of the appeal and that ~~he~~ THE APPELLEE will not
17 BE adequately ~~be~~ protected under the appeals bond and the other
18 requirements for appeal pursuant to sections 13-40-118, 13-40-120 and
19 13-40-123.

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22 **SECTION 5.** In Colorado Revised Statutes, 13-54-102, **amend**
23 (1)(r) as follows:

24 **13-54-102. Property exempt - definitions - repeal.** (1) The
25 following property is exempt from levy and sale under writ of attachment
26 or writ of execution:

27 (r) For purposes of garnishment proceedings pursuant to ~~the~~

1 provisions of article 54.5 of this title TITLE 13, any amount held by a third
2 party as a security deposit, as defined in section 38-12-102 (2), C.R.S.
3 SECTION 38-12-102 (6), or any amount held by a third party as a utility
4 deposit to secure payment for utility goods or services used or consumed
5 by the debtor or his THE DEBTOR'S dependents;

6 **SECTION 6.** In Colorado Revised Statutes, **amend** 38-12-101 as
7 follows:

8 **38-12-101. Legislative declaration.** ~~The provisions of~~ This part
9 shall be liberally construed to implement the intent of the general
10 assembly to ~~insure~~ ENSURE the proper administration of security deposits
11 AND LATE FEES and protect the interests of tenants, MOBILE HOME
12 OWNERS, and landlords.

13 **SECTION 7.** In Colorado Revised Statutes, **amend** 38-12-102 as
14 follows:

15 **38-12-102. Definitions.** As used in this part 1, unless the context
16 otherwise requires:

17 

18 (1) "HOME OWNER" HAS THE MEANING SET FORTH IN SECTION
19 38-12-201.5 (2).

20 (2) "LANDLORD" MEANS A LANDLORD, AS DEFINED IN SECTION
21 38-12-502 (5), OR THE MANAGEMENT OR LANDLORD OF A MOBILE HOME
22 PARK, AS DEFINED IN SECTION 38-12-201.5 (3).

23 (3) "LATE FEE" MEANS A MONETARY SUM THAT A LANDLORD
24 CHARGES A TENANT OR HOME OWNER AS A RESULT OF THE TENANT'S OR
25 HOME OWNER'S FAILURE TO TIMELY PAY RENT AND THAT IS DETERMINED
26 PURSUANT TO A RENTAL AGREEMENT BETWEEN THE LANDLORD AND THE
27 TENANT OR HOME OWNER.

1 (4) "Normal wear and tear" means that deterioration which
2 THAT occurs, based upon the use for which the A rental unit OR MOBILE
3 HOME SPACE, AS DEFINED IN SECTION 38-12-201.5(7), is intended, without
4 negligence, carelessness, accident, or abuse of the premises or equipment
5 or chattels by the tenant OR HOME OWNER or members of his THE
6 TENANT'S OR HOME OWNER'S household, or their invitees or guests.

7 (5) "RENT SUBSIDY PROVIDER" MEANS A PUBLIC OR PRIVATE
8 ENTITY, INCLUDING A PUBLIC HOUSING AUTHORITY, THAT PROVIDES
9 ONGOING FINANCIAL ASSISTANCE TO A LANDLORD FOR THE PURPOSE OF
10 SUBSIDIZING RENT.

11 (2)(6) "Security deposit" means any advance or deposit of money,
12 regardless of its denomination, the primary function of which is to secure
13 the performance of a rental agreement for A residential premises or any
14 part thereof OF A RESIDENTIAL PREMISES.

15 (7) "TENANT" HAS THE MEANING SET FORTH IN SECTION 38-12-502
16 (9).

17 **SECTION 8.** In Colorado Revised Statutes, **add** 38-12-105 as
18 follows:

19 **38-12-105. Late fees charged to tenants and mobile home
20 owners - maximum late fee amounts - prohibited acts - penalties -
21 period to cure violations - remedies - unfair or deceptive trade
22 practice.** (1) A LANDLORD SHALL NOT TAKE ANY OF THE FOLLOWING
23 ACTIONS OR DIRECT ANY AGENT TO TAKE ANY OF THE FOLLOWING ACTIONS
24 ON THE LANDLORD'S BEHALF:

25 (a) CHARGE A TENANT OR HOME OWNER A LATE FEE UNLESS A
26 RENT PAYMENT IS LATE BY AT LEAST SEVEN CALENDAR DAYS;

27 (b) CHARGE A TENANT OR HOME OWNER A LATE FEE IN AN AMOUNT

1 THAT EXCEEDS THE GREATER OF:

2 (I) FIFTY DOLLARS; OR

3 (II) FIVE PERCENT OF THE AMOUNT OF THE PAST DUE RENT

4 PAYMENT;

5 (c) REQUIRE A TENANT OR HOME OWNER TO PAY A LATE FEE

6 UNLESS THE LATE FEE IS DISCLOSED IN THE RENTAL AGREEMENT;

7 (d) REMOVE OR EXCLUDE A TENANT FROM A DWELLING OR

8 INITIATE A COURT PROCESS FOR THE REMOVAL OR EXCLUSION OF A

9 TENANT FROM A DWELLING BECAUSE THE TENANT FAILS TO PAY ONE OR

10 MORE LATE FEES TO THE LANDLORD;

11 (e) TERMINATE A TENANCY OR OTHER ESTATE AT WILL OR A LEASE

12 IN A MOBILE HOME PARK BECAUSE A TENANT OR HOME OWNER FAILS TO

13 PAY ONE OR MORE LATE FEES TO THE LANDLORD;

14 (f) IMPOSE A LATE FEE ON A TENANT OR HOME OWNER FOR THE

15 LATE PAYMENT OR NONPAYMENT OF ANY PORTION OF THE RENT THAT A

16 RENT SUBSIDY PROVIDER, RATHER THAN THE TENANT OR HOME OWNER, IS

17 RESPONSIBLE FOR PAYING;

18 (g) IMPOSE A LATE FEE MORE THAN ONCE FOR EACH LATE

19 PAYMENT, EXCEPT THAT A LANDLORD MAY IMPOSE A LATE FEE MORE THAN

20 ONCE FOR A LATE PAYMENT IF THE TOTAL AMOUNT OF SUCH LATE FEES

21 DOES NOT EXCEED THE AMOUNT DESCRIBED IN SUBSECTION (1)(b) OF THIS

22 SECTION;

23 (h) REQUIRE A TENANT OR HOME OWNER TO PAY ANY AMOUNT OF

24 INTEREST ON A LATE FEE;

25 (i) RECOUP ANY AMOUNT OF A LATE FEE FROM A RENT PAYMENT

26 MADE TO THE LANDLORD BY A TENANT OR HOME OWNER; OR

27 (j) CHARGE A TENANT OR HOME OWNER A LATE FEE UNLESS THE

1 LANDLORD PROVIDED THE TENANT OR HOME OWNER WRITTEN NOTICE OF
2 THE LATE FEE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE UPON
3 WHICH THE RENT PAYMENT WAS DUE.

4 (2) A PROVISION OF A LEASE OF A LANDLORD OR PERSON ACTING
5 ON BEHALF OF A LANDLORD THAT DOES NOT COMPLY WITH THE
6 PROVISIONS OF SUBSECTION (1) OF THIS SECTION IS VOID AND
7 UNENFORCEABLE. A TENANT WHO IS AGGRIEVED BY AN ACTION TAKEN BY
8 A LANDLORD OR PERSON ACTING ON BEHALF OF THE LANDLORD IN
9 VIOLATION OF SUBSECTION (1) OF THIS SECTION MAY BRING AN ACTION
10 FOR INJUNCTIVE RELIEF PURSUANT TO SUBSECTION (5) OF THIS SECTION.

11 (3) A LANDLORD WHO VIOLATES SUBSECTION (1) OF THIS SECTION
12 SHALL PAY TO AN AGGRIEVED TENANT OR HOME OWNER A PENALTY IN THE
13 AMOUNT OF FIFTY DOLLARS FOR EACH VIOLATION.

14 (4) EXCEPT AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION,
15 AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE
16 CONTRARY, A LANDLORD WHO VIOLATES SUBSECTION (1) OF THIS SECTION
17 HAS SEVEN DAYS TO CURE THE VIOLATION, WHICH SEVEN DAYS BEGINS
18 WHEN THE LANDLORD RECEIVES WRITTEN OR ELECTRONIC NOTICE OF THE
19 VIOLATION.

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

24 (a) COMPENSATORY DAMAGES FOR INJURY OR LOSS SUFFERED;
25 (b) A PENALTY OF AT LEAST ONE HUNDRED FIFTY DOLLARS BUT
26 NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, PAYABLE
27 TO THE TENANT OR HOME OWNER;

1 (c) COSTS, INCLUDING REASONABLE ATTORNEY FEES TO THE
2 PREVAILING PARTY; AND

3 (d) OTHER EQUITABLE RELIEF THE COURT FINDS APPROPRIATE.

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

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11

12 **SECTION 9.** In Colorado Revised Statutes, 38-12-201.5, **amend**
13 the introductory portion, (1)(d), and (1)(e); and **add** (1)(f) and (2.5) as
14 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 10. 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 TEN CALENDAR DAYS AFTER THE DAY RENT IS DUE AND PAYABLE;

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

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

14 **SECTION 11.** In Colorado Revised Statutes, **amend** 38-12-220
15 as follows:

16 **38-12-220. Private civil right of action.** ~~Any~~ A home owner who
17 ~~owns a home in a mobile home park where the landlord has violated any~~
18 provision of this ~~article~~ shall have ARTICLE 12 HAS a private civil right of
19 action against the landlord. In any such action, EXCEPT AS DESCRIBED IN
20 SECTION 38-12-105 (4), the home owner ~~shall be~~ IS entitled to actual
21 economic damages and reasonable attorney fees and costs if the home
22 owner is successful in the action.

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

25 **38-12-507. Breach of warranty of habitability - tenant's**
26 **remedies.** (1) If there is a breach of the warranty of habitability as set
27 forth in section 38-12-503 (2):

(c) (I) In an action for possession OR COLLECTION based upon nonpayment of rent, in which the tenant asserts a defense to possession based upon the landlord's alleged breach of the warranty of habitability, upon the filing of the tenant's answer the court shall order the tenant to pay into the registry of the court all or part of the rent accrued after due consideration of expenses already incurred by the tenant based upon the landlord's breach of the warranty of habitability. THE TENANT MAY ASSERT, AS AN AFFIRMATIVE DEFENSE, AN ALLEGED BREACH OF THE WARRANTY OF HABITABILITY, PROVIDED THAT THE LANDLORD OR ANY AGENT ACTING ON BEHALF OF THE LANDLORD HAS PREVIOUSLY RECEIVED WRITTEN OR ELECTRONIC NOTICE OF AN ALLEGED BREACH OF THE WARRANTY OF HABITABILITY. IF A COUNTY OR DISTRICT COURT IS SATISFIED THAT THE DEFENDANT IS UNABLE TO DEPOSIT THE AMOUNT OF RENT SPECIFIED BECAUSE THE DEFENDANT IS FOUND TO BE INDIGENT PURSUANT TO SUBSECTION (1)(c)(II) OF THIS SECTION, THE DEFENDANT SHALL NOT BE REQUIRED TO DEPOSIT ANY AMOUNTS TO RAISE WARRANTY OF HABITABILITY CLAIMS AS AN AFFIRMATIVE DEFENSE AND THE CLAIM WILL BE PERFECTED.

19 (II) A DEFENDANT IS INDIGENT FOR THE PURPOSES OF THIS SECTION
20 IF THE DEFENDANT HAS A NET INCOME THAT IS:

21 (A) FIVE TIMES OR LESS THE ANNUAL RENTAL OF THE DEFENDANT'S
22 PREMISES, AFTER ALLOWING ALL EXEMPTIONS AVAILABLE TO FAMILIES
23 OCCUPYING DWELLINGS IN LOW-RENT HOUSING AUTHORIZED UNDER THE
24 ACT OF THE CONGRESS OF THE UNITED STATES KNOWN AS THE "UNITED
25 STATES HOUSING ACT OF 1937", AS AMENDED. FOR THE PURPOSE OF
26 MAKING AN INDIGENT DETERMINATION IN COMPUTING THE ANNUAL
27 RENTAL, THERE MUST BE INCLUDED IN THE CALCULATION THE AVERAGE

1 ANNUAL COST TO THE DEFENDANT, AS DETERMINED BY THE COURT, OF
2 HEAT, WATER, ELECTRICITY, GAS, AND OTHER NECESSARY SERVICES OR
3 FACILITIES, WHETHER OR NOT THE CHARGE FOR SUCH SERVICES AND
4 FACILITIES IS IN FACT INCLUDED IN THE RENTAL; OR

5 (B) LESS THAN TWO HUNDRED FIFTY PERCENT OF THE FEDERAL
6 POVERTY LINE; EXCEPT THAT, FOR PURPOSES OF CALCULATION, A
7 DEFENDANT'S ASSETS MUST NOT BE TAKEN INTO ACCOUNT.

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

13 (d.5) THE COURT SHALL DETERMINE THE REDUCTION OF THE
14 PREMISE'S RENTAL VALUE IN ITS UNINHABITABLE STATE TO THE DATE OF
15 TRIAL AND SHALL DENY POSSESSION TO THE LANDLORD AND DEEM THE
16 TENANT TO BE THE PREVAILING PARTY, CONDITIONED UPON THE PAYMENT
17 OF THE RENT THAT HAS ACCRUED TO THE DATE OF THE TRIAL, AS
18 ADJUSTED PURSUANT TO THE REDUCTION IN THE RENTAL VALUE CAUSED
19 BY THE BREACH OF THE WARRANTY OF HABITABILITY. THE TENANT SHALL
20 MAKE THIS PAYMENT TO EITHER THE COURT OR THE LANDLORD WITHIN
21 FOURTEEN DAYS FROM THE DATE OF THE COURT'S JUDGMENT. THE COURT
22 MAY ORDER THE LANDLORD TO MAKE REPAIRS AND CORRECT THE
23 CONDITIONS THAT CONSTITUTE A BREACH OF THE LANDLORD'S
24 OBLIGATIONS, SHALL ORDER THAT THE MONTHLY RENT BE LIMITED TO THE
25 PREMISE'S REASONABLE RENTAL VALUE, AS DETERMINED PURSUANT TO
26 THIS SECTION, UNTIL REPAIRS ARE COMPLETED, AND SHALL AWARD THE
27 TENANT COSTS AND ATTORNEY FEES IF PROVIDED BY AND PURSUANT TO

1 ANY STATUTE OR THE CONTRACT OF THE PARTIES. IF THE COURT ORDERS
2 REPAIRS OR CORRECTIONS, OR BOTH, PURSUANT TO THIS SECTION, THE
3 COURT'S JURISDICTION CONTINUES OVER THE MATTER FOR THE PURPOSE
4 OF ENSURING COMPLIANCE. THE COURT SHALL AWARD POSSESSION OF THE
5 PREMISES TO THE LANDLORD IF THE TENANT FAILS TO PAY ALL REDUCED
6 RENT OBLIGATIONS ACCRUED TO THE DATE OF TRIAL WITHIN THE PERIOD
7 PRESCRIBED BY THE COURT PURSUANT TO THIS SUBSECTION (1)(d.5).

8 **SECTION 13.** In Colorado Revised Statutes, **amend** 38-12-510
9 as follows:

10 **38-12-510. Unlawful removal or exclusion.** (1) It ~~shall be~~ IS
11 unlawful for a landlord to remove or exclude a tenant from a dwelling
12 unit without resorting to court process, unless the removal or exclusion
13 is consistent with ~~the provisions of~~ article 18.5 of title 25 C.R.S., and the
14 rules promulgated by the state board of health for the cleanup of an illegal
15 drug laboratory; ~~or~~ is with the mutual consent of the landlord and tenant;
16 or unless the dwelling unit has been abandoned by the tenant, as
17 evidenced by the return of keys, the substantial removal of the tenant's
18 personal property, notice by the tenant, or the extended absence of the
19 tenant while rent remains unpaid, any of which would cause a reasonable
20 person to believe the tenant had permanently surrendered possession of
21 the dwelling unit. ~~Such~~ Unlawful removal or exclusion includes the
22 willful termination of utilities or the willful removal of doors, windows,
23 or locks to the premises other than as required for repair or maintenance.
24 If the landlord willfully and unlawfully removes the tenant from the
25 premises or willfully and unlawfully causes the termination of heat,
26 running water, hot water, electric, gas, or other essential services, the
27 tenant may seek any remedy available under the law, including this part

1 5.

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

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

12 

13 **SECTION 14.** In Colorado Revised Statutes, 38-12-801, **add (3)**
14 as follows:

15 **38-12-801. Written rental agreement - prohibited clauses -**
16 **copy - tenant.** (3) A WRITTEN RENTAL AGREEMENT MUST NOT INCLUDE:

17 (a) AN UNREASONABLE LIQUIDATED DAMAGES CLAUSE THAT
18 ASSIGNS A COST TO A PARTY STEMMING FROM AN EVICTION NOTICE OR AN
19 EVICTION ACTION FROM A VIOLATION OF THE RENTAL AGREEMENT; OR

20 (b) A ONE-WAY, FEE-SHIFTING CLAUSE THAT AWARDS ATTORNEY
21 FEES AND COURT COSTS ONLY TO ONE PARTY. ANY FEE-SHIFTING CLAUSE
22 CONTAINED IN A RENTAL AGREEMENT MUST AWARD ATTORNEY FEES TO
23 THE PREVAILING PARTY IN A COURT DISPUTE CONCERNING THE RENTAL
24 AGREEMENT, RESIDENTIAL PREMISES, OR DWELLING UNIT.

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

27 **SECTION 15.** In Colorado Revised Statutes, 24-34-501, **amend**

1 (2) as follows:

2 **24-34-501. Definitions.** As used in this part 5, unless the context
3 otherwise requires:

4 (2) "Housing" means any building, structure, vacant land, or part
5 thereof offered for sale, lease, rent, or transfer of ownership. ~~except that~~
6 ~~"housing" does not include any room offered for rent or lease in a~~
7 ~~single-family dwelling maintained and occupied in part by the owner or~~
8 ~~lessee of said dwelling as his household.~~

9 **SECTION 16. Appropriation.** For the 2021-22 state fiscal year,
10 \$15,756 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 0.2 FTE. To implement this act, the department
13 may use this appropriation for trial court programs.

14 **SECTION 17. Act subject to petition - effective date.** This act
15 takes effect October 1, 2021; except that, if a referendum petition is filed
16 pursuant to section 1 (3) of article V of the state constitution against this
17 act or an item, section, or part of this act within the ninety-day period
18 after final adjournment of the general assembly, then the act, item,
19 section, or part will not take effect unless approved by the people at the
20 general election to be held in November 2022 and, in such case, will take
21 effect on the date of the official declaration of the vote thereon by the
22 governor.