NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 08-1356

BY REPRESENTATIVE(S) Merrifield, Kefalas, Soper, Weissmann, Benefield, Carroll M., Casso, Fischer, Green, Judd, Kerr A., Labuda, Levy, Madden, McGihon, Middleton, Peniston, Pommer, Primavera, Riesberg, Todd, Borodkin, Carroll T., and Curry;
also SENATOR(S) Tupa and Boyd, Bacon, Gordon, Groff, Hagedorn, Keller, Morse, Romer, Williams, and Windels.

CONCERNING LANDLORD AND TENANT RELATIONS.

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

SECTION 1. 13-40-111 (1), Colorado Revised Statutes, is amended to read:

13-40-111. Issuance and return of summons. (1) Upon filing the complaint as provided in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons shall command the defendant to appear before the court at a place named in such summons and at a time and on a day which shall be not less than five business days nor more than ten calendar days from the day of issuing the same to answer the complaint of plaintiff. The summons shall also contain a statement addressed to the defendant stating: "If you fail to file with the court, at or before the time for appearance specified in the summons, an

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Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

answer to the complaint setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the plaintiff is entitled. IF YOU ARE CLAIMING THAT THE LANDLORD'S FAILURE TO REPAIR THE RESIDENTIAL PREMISES IS A DEFENSE TO THE LANDLORD'S ALLEGATION OF NONPAYMENT OF RENT, THE COURT WILL REQUIRE YOU TO PAY INTO THE REGISTRY OF THE COURT, AT THE TIME OF FILING YOUR ANSWER, THE RENT DUE LESS ANY EXPENSES YOU HAVE INCURRED BASED UPON THE LANDLORD'S FAILURE TO REPAIR THE RESIDENTIAL PREMISES."

SECTION 2. 13-40-123, Colorado Revised Statutes, is amended to read:

13-40-123. Damages. The prevailing party in any action brought under the provisions of this article is entitled to recover damages, reasonable attorney fees, and costs of suit; EXCEPT THAT A RESIDENTIAL LANDLORD OR TENANT WHO IS A PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER REASONABLE ATTORNEY FEES UNLESS THE RESIDENTIAL RENTAL AGREEMENT BETWEEN THE PARTIES CONTAINS A PROVISION FOR EITHER PARTY TO OBTAIN ATTORNEY FEES. Nothing in this section shall be construed to permit the entry of judgments in any single proceeding in excess of the jurisdictional limit of said court.

SECTION 3. Article 12 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 5
OBLIGATION TO MAINTAIN RESIDENTIAL PREMISES - UNLAWFUL REMOVAL

38-12-501. Legislative declaration - matter of statewide concern - purposes and policies. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PROVISIONS OF THIS PART 5 ARE A MATTER OF STATEWIDE CONCERN. ANY LOCAL GOVERNMENT ORDINANCE, RESOLUTION, OR OTHER REGULATION THAT IS IN CONFLICT WITH THIS PART 5 SHALL BE UNENFORCEABLE.

(2) THE UNDERLYING PURPOSES AND POLICIES OF THIS PART 5 ARE TO:

(a) SIMPLIFY, CLARIFY, MODERNIZE, AND REVISE THE LAW GOVERNING THE RENTAL OF DWELLING UNITS AND THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS;

(b) ENCOURAGE LANDLORDS AND TENANTS TO MAINTAIN AND IMPROVE THE QUALITY OF HOUSING; AND

(c) MAKE UNIFORM THE LAW WITH RESPECT TO THE SUBJECT OF THIS PART 5 THROUGHOUT COLORADO.

38-12-502. Definitions. AS USED IN THIS PART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMMON AREAS" MEANS THE FACILITIES AND APPURTENANCES TO A RESIDENTIAL PREMISES, INCLUDING THE GROUNDS, AREAS, AND FACILITIES HELD OUT FOR THE USE OF TENANTS GENERALLY OR WHOSE USE IS PROMISED TO A TENANT.

(2) "DWELLING UNIT" MEANS A STRUCTURE OR THE PART OF A STRUCTURE THAT IS USED AS A HOME, RESIDENCE, OR SLEEPING PLACE BY A TENANT.

(3) "LANDLORD" MEANS THE OWNER, MANAGER, LESSOR, OR SUBLESSOR OF A RESIDENTIAL PREMISES.

(4) "RENTAL AGREEMENT" MEANS THE AGREEMENT, WRITTEN OR ORAL, EMBODYING THE TERMS AND CONDITIONS CONCERNING THE USE AND OCCUPANCY OF A RESIDENTIAL PREMISES.

(5) "RESIDENTIAL PREMISES" MEANS A DWELLING UNIT, THE STRUCTURE OF WHICH THE UNIT IS A PART, AND THE COMMON AREAS.

(6) "TENANT" MEANS A PERSON ENTITLED UNDER A RENTAL AGREEMENT TO OCCUPY A DWELLING UNIT TO THE EXCLUSION OF OTHERS.

38-12-503. Warranty of habitability. (1) IN EVERY RENTAL AGREEMENT, THE LANDLORD IS DEEMED TO WARRANT THAT THE

RESIDENTIAL PREMISES IS FIT FOR HUMAN HABITATION.

(2) A LANDLORD BREACHES THE WARRANTY OF HABITABILITY SET FORTH IN SUBSECTION (1) OF THIS SECTION IF:

(a) A RESIDENTIAL PREMISES IS UNINHABITABLE AS DESCRIBED IN SECTION 38-12-505 OR OTHERWISE UNFIT FOR HUMAN HABITATION; AND

(b) THE RESIDENTIAL PREMISES IS IN A CONDITION THAT IS MATERIALLY DANGEROUS OR HAZARDOUS TO THE TENANT'S LIFE, HEALTH, OR SAFETY; AND

(c) THE LANDLORD HAS RECEIVED WRITTEN NOTICE OF THE CONDITION DESCRIBED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2) AND FAILED TO CURE THE PROBLEM WITHIN A REASONABLE TIME.

(3) WHEN ANY CONDITION DESCRIBED IN SUBSECTION (2) OF THIS SECTION IS CAUSED BY THE MISCONDUCT OF THE TENANT, A MEMBER OF THE TENANT'S HOUSEHOLD, A GUEST OR INVITEE OF THE TENANT, OR A PERSON UNDER THE TENANT'S DIRECTION OR CONTROL, THE CONDITION SHALL NOT CONSTITUTE A BREACH OF THE WARRANTY OF HABITABILITY. IT SHALL NOT BE MISCONDUCT BY A VICTIM OF DOMESTIC VIOLENCE OR DOMESTIC ABUSE UNDER THIS SUBSECTION (3) IF THE CONDITION IS THE RESULT OF DOMESTIC VIOLENCE OR DOMESTIC ABUSE AND THE LANDLORD HAS BEEN GIVEN WRITTEN NOTICE AND EVIDENCE OF DOMESTIC VIOLENCE OR DOMESTIC ABUSE AS DESCRIBED IN SECTION 38-12-402 (2) (a).

(4) IN RESPONSE TO THE NOTICE SENT PURSUANT TO PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION, A LANDLORD MAY, IN THE LANDLORD'S DISCRETION, MOVE A TENANT TO A COMPARABLE UNIT AFTER PAYING THE REASONABLE COSTS, ACTUALLY INCURRED, INCIDENT TO THE MOVE.

(5) EXCEPT AS SET FORTH IN THIS PART 5, ANY AGREEMENT WAIVING OR MODIFYING THE WARRANTY OF HABITABILITY SHALL BE VOID AS CONTRARY TO PUBLIC POLICY.

(6) NOTHING IN THIS PART 5 SHALL:

(a) PREVENT A LANDLORD FROM TERMINATING A RENTAL AGREEMENT AS A RESULT OF A CASUALTY OR CATASTROPHE TO THE

DWELLING UNIT WITHOUT FURTHER LIABILITY TO THE LANDLORD OR TENANT; OR

(b) PRECLUDE A LANDLORD FROM INITIATING AN ACTION FOR NONPAYMENT OF RENT, BREACH OF THE RENTAL AGREEMENT, VIOLATION OF SECTION 38-12-504, OR AS PROVIDED FOR UNDER ARTICLE 40 OF TITLE 13, C.R.S.

38-12-504. Tenant's maintenance of premises. (1) IN ADDITION TO ANY DUTIES IMPOSED UPON A TENANT BY A RENTAL AGREEMENT, EVERY TENANT OF A RESIDENTIAL PREMISES HAS A DUTY TO USE THAT PORTION OF THE PREMISES WITHIN THE TENANT'S CONTROL IN A REASONABLY CLEAN AND SAFE MANNER. A TENANT FAILS TO MAINTAIN THE PREMISES IN A REASONABLY CLEAN AND SAFE MANNER WHEN THE TENANT SUBSTANTIALLY FAILS TO:

(a) COMPLY WITH OBLIGATIONS IMPOSED UPON TENANTS BY APPLICABLE PROVISIONS OF BUILDING, HEALTH, AND HOUSING CODES MATERIALLY AFFECTING HEALTH AND SAFETY;

(b) KEEP THE DWELLING UNIT REASONABLY CLEAN, SAFE, AND SANITARY AS PERMITTED BY THE CONDITIONS OF THE UNIT;

(c) DISPOSE OF ASHES, GARBAGE, RUBBISH, AND OTHER WASTE FROM THE DWELLING UNIT IN A CLEAN, SAFE, SANITARY, AND LEGALLY COMPLIANT MANNER;

(d) USE IN A REASONABLE MANNER ALL ELECTRICAL, PLUMBING, SANITARY, HEATING, VENTILATING, AIR-CONDITIONING, ELEVATORS, AND OTHER FACILITIES AND APPLIANCES IN THE DWELLING UNIT;

(e) CONDUCT HIMSELF OR HERSELF AND REQUIRE OTHER PERSONS IN THE RESIDENTIAL PREMISES WITHIN THE TENANT'S CONTROL TO CONDUCT THEMSELVES IN A MANNER THAT DOES NOT DISTURB THEIR NEIGHBORS' PEACEFUL ENJOYMENT OF THE NEIGHBORS' DWELLING UNIT; OR

(f) PROMPTLY NOTIFY THE LANDLORD IF THE RESIDENTIAL PREMISES IS UNINHABITABLE AS DEFINED IN SECTION 38-12-505 OR IF THERE IS A CONDITION THAT COULD RESULT IN THE PREMISES BECOMING UNINHABITABLE IF NOT REMEDIED.

(2) IN ADDITION TO THE DUTIES SET FORTH IN SUBSECTION (1) OF THIS SECTION, A TENANT SHALL NOT KNOWINGLY, INTENTIONALLY, DELIBERATELY, OR NEGLIGENTLY DESTROY, DEFACE, DAMAGE, IMPAIR, OR REMOVE ANY PART OF THE RESIDENTIAL PREMISES OR KNOWINGLY PERMIT ANY PERSON WITHIN HIS OR HER CONTROL TO DO SO.

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE A MODIFICATION OF A LANDLORD'S OBLIGATIONS UNDER THE WARRANTY OF HABITABILITY.

38-12-505. Uninhabitable residential premises. (1) A RESIDENTIAL PREMISES IS DEEMED UNINHABITABLE IF IT SUBSTANTIALLY LACKS ANY OF THE FOLLOWING CHARACTERISTICS:

(a) WATERPROOFING AND WEATHER PROTECTION OF ROOF AND EXTERIOR WALLS MAINTAINED IN GOOD WORKING ORDER, INCLUDING UNBROKEN WINDOWS AND DOORS;

(b) PLUMBING OR GAS FACILITIES THAT CONFORMED TO APPLICABLE LAW IN EFFECT AT THE TIME OF INSTALLATION AND THAT ARE MAINTAINED IN GOOD WORKING ORDER;

(c) RUNNING WATER AND REASONABLE AMOUNTS OF HOT WATER AT ALL TIMES FURNISHED TO APPROPRIATE FIXTURES AND CONNECTED TO A SEWAGE DISPOSAL SYSTEM APPROVED UNDER APPLICABLE LAW;

(d) FUNCTIONING HEATING FACILITIES THAT CONFORMED TO APPLICABLE LAW AT THE TIME OF INSTALLATION AND THAT ARE MAINTAINED IN GOOD WORKING ORDER;

(e) ELECTRICAL LIGHTING, WITH WIRING AND ELECTRICAL EQUIPMENT THAT CONFORMED TO APPLICABLE LAW AT THE TIME OF INSTALLATION, MAINTAINED IN GOOD WORKING ORDER;

(f) COMMON AREAS AND AREAS UNDER THE CONTROL OF THE LANDLORD THAT ARE KEPT REASONABLY CLEAN, SANITARY, AND FREE FROM ALL ACCUMULATIONS OF DEBRIS, FILTH, RUBBISH, AND GARBAGE AND THAT HAVE APPROPRIATE EXTERMINATION IN RESPONSE TO THE INFESTATION OF RODENTS OR VERMIN;

(g) APPROPRIATE EXTERMINATION IN RESPONSE TO THE INFESTATION OF RODENTS OR VERMIN THROUGHOUT A RESIDENTIAL PREMISES;

(h) AN ADEQUATE NUMBER OF APPROPRIATE EXTERIOR RECEPTACLES FOR GARBAGE AND RUBBISH, IN GOOD REPAIR;

(i) FLOORS, STAIRWAYS, AND RAILINGS MAINTAINED IN GOOD REPAIR;

(j) LOCKS ON ALL EXTERIOR DOORS AND LOCKS OR SECURITY DEVICES ON WINDOWS DESIGNED TO BE OPENED THAT ARE MAINTAINED IN GOOD WORKING ORDER; OR

(k) COMPLIANCE WITH ALL APPLICABLE BUILDING, HOUSING, AND HEALTH CODES, WHICH, IF VIOLATED, WOULD CONSTITUTE A CONDITION THAT IS DANGEROUS OR HAZARDOUS TO A TENANT'S LIFE, HEALTH, OR SAFETY.

(2) NO DEFICIENCY IN THE COMMON AREA SHALL RENDER A RESIDENTIAL PREMISES UNINHABITABLE AS SET FORTH IN SUBSECTION (1) OF THIS SECTION, UNLESS IT MATERIALLY AND SUBSTANTIALLY LIMITS THE TENANT'S USE OF HIS OR HER DWELLING UNIT.

(3) UNLESS OTHERWISE STATED IN SECTION 38-12-506, PRIOR TO BEING LEASED TO A TENANT, A RESIDENTIAL PREMISES MUST COMPLY WITH THE REQUIREMENTS SET FORTH IN SECTION 38-12-503 (1), (2) (a), AND (2) (b).

38-12-506. Opt-out. (1) IF A DWELLING UNIT IS CONTAINED WITHIN A MOBILE HOME PARK, AS DEFINED IN SECTION 38-12-201.5 (3), OR IF THERE ARE FOUR OR FEWER DWELLING UNITS SHARING COMMON WALLS OR LOCATED ON THE SAME PARCEL, AS DEFINED IN SECTION 30-28-302 (5), C.R.S., ALL OF WHICH HAVE THE SAME OWNER, OR IF THE DWELLING UNIT IS A SINGLE-FAMILY RESIDENTIAL PREMISES:

(a) A GOOD FAITH RENTAL AGREEMENT MAY REQUIRE A TENANT TO ASSUME THE OBLIGATION FOR ONE OR MORE OF THE CHARACTERISTICS CONTAINED IN SECTION 38-12-505 (1) (f), (1) (g), AND (1) (h), AS LONG AS THE REQUIREMENT IS NOT INCONSISTENT WITH ANY OBLIGATIONS IMPOSED UPON A LANDLORD BY A GOVERNMENTAL ENTITY FOR THE RECEIPT OF A

SUBSIDY FOR THE RESIDENTIAL PREMISES; AND

(b) FOR ANY DWELLING UNIT FOR WHICH A LANDLORD DOES NOT RECEIVE A SUBSIDY FROM ANY GOVERNMENTAL SOURCE, A LANDLORD AND TENANT MAY AGREE IN WRITING THAT THE TENANT IS TO PERFORM SPECIFIC REPAIRS, MAINTENANCE TASKS, ALTERATIONS, AND REMODELING, BUT ONLY IF:

(I) THE AGREEMENT OF THE PARTIES IS ENTERED INTO IN GOOD FAITH AND IS SET FORTH IN A SEPARATE WRITING SIGNED BY THE PARTIES AND SUPPORTED BY ADEQUATE CONSIDERATION;

(II) THE WORK IS NOT NECESSARY TO CURE A FAILURE TO COMPLY WITH SECTION 38-12-505 (3); AND

(III) SUCH AGREEMENT DOES NOT AFFECT THE OBLIGATION OF THE LANDLORD TO OTHER TENANTS' RESIDENTIAL PREMISES.

(2) FOR A SINGLE-FAMILY RESIDENTIAL PREMISES FOR WHICH A LANDLORD DOES NOT RECEIVE A SUBSIDY FROM ANY GOVERNMENTAL SOURCE, A LANDLORD AND TENANT MAY AGREE IN WRITING THAT THE TENANT IS TO PERFORM SPECIFIC REPAIRS, MAINTENANCE TASKS, ALTERATIONS, AND REMODELING NECESSARY TO CURE A FAILURE TO COMPLY WITH SECTION 38-12-505 (3), BUT ONLY IF:

(a) THE AGREEMENT OF THE LANDLORD AND TENANT IS ENTERED INTO IN GOOD FAITH AND IS SET FORTH IN A WRITING THAT IS SEPARATE FROM THE RENTAL AGREEMENT, SIGNED BY THE PARTIES, AND SUPPORTED BY ADEQUATE CONSIDERATION; AND

(b) THE TENANT HAS THE REQUISITE SKILLS TO PERFORM THE WORK REQUIRED TO CURE A FAILURE TO COMPLY WITH SECTION 38-12-505 (3).

(3) TO THE EXTENT THAT PERFORMANCE BY A TENANT RELATES TO A CHARACTERISTIC SET FORTH IN SECTION 38-12-505 (1), THE TENANT SHALL ASSUME THE OBLIGATION FOR SUCH CHARACTERISTIC.

(4) IF CONSISTENT WITH THIS SECTION A TENANT ASSUMES AN OBLIGATION FOR A CHARACTERISTIC SET FORTH IN SECTION 38-12-505 (1), THE LACK OF SUCH CHARACTERISTIC SHALL NOT MAKE A RESIDENTIAL

PREMISES UNINHABITABLE.

38-12-507. Breach of warranty of habitability - tenant's remedies. (1) IF THERE IS A BREACH OF THE WARRANTY OF HABITABILITY AS SET FORTH IN SECTION 38-12-503 (2), THE FOLLOWING PROVISIONS SHALL APPLY:

(a) UPON NO LESS THAN TEN AND NO MORE THAN THIRTY DAYS WRITTEN NOTICE TO THE LANDLORD SPECIFYING THE CONDITION ALLEGED TO BREACH OF THE WARRANTY OF HABITABILITY AND GIVING THE LANDLORD FIVE BUSINESS DAYS FROM THE RECEIPT OF THE WRITTEN NOTICE TO REMEDY THE BREACH, A TENANT MAY TERMINATE THE RENTAL AGREEMENT BY SURRENDERING POSSESSION OF THE DWELLING UNIT. IF THE BREACH IS REMEDIABLE BY REPAIRS, THE PAYMENT OF DAMAGES, OR OTHERWISE AND THE LANDLORD ADEQUATELY REMEDIES THE BREACH WITHIN FIVE BUSINESS DAYS OF RECEIPT OF THE NOTICE, THE RENTAL AGREEMENT SHALL NOT TERMINATE BY REASON OF THE BREACH.

(b) A TENANT MAY OBTAIN INJUNCTIVE RELIEF FOR BREACH OF THE WARRANTY OF HABITABILITY IN ANY COURT OF COMPETENT JURISDICTION. IN ANY PROCEEDING FOR INJUNCTIVE RELIEF, THE COURT SHALL DETERMINE ACTUAL DAMAGES FOR A BREACH OF THE WARRANTY AT THE TIME THE COURT ORDERS THE INJUNCTIVE RELIEF. A LANDLORD SHALL NOT BE SUBJECT TO ANY COURT ORDER FOR INJUNCTIVE RELIEF IF THE LANDLORD TENDERS THE ACTUAL DAMAGES TO THE COURT WITHIN TWO BUSINESS DAYS OF THE ORDER. UPON APPLICATION BY THE TENANT, THE COURT SHALL IMMEDIATELY RELEASE TO THE TENANT THE DAMAGES PAID BY THE LANDLORD. IF THE TENANT VACATES THE LEASED PREMISES, THE LANDLORD SHALL NOT BE PERMITTED TO RENT THE PREMISES AGAIN UNTIL SUCH TIME AS THE UNIT WOULD BE IN COMPLIANCE WITH THE WARRANTY OF HABITABILITY SET FORTH IN SECTION 38-12-503 (1).

(c) IN AN ACTION FOR POSSESSION 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.

(d) WHETHER ASSERTED AS A CLAIM OR COUNTERCLAIM, A TENANT MAY RECOVER DAMAGES DIRECTLY ARISING FROM A BREACH OF THE WARRANTY OF HABITABILITY, WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, ANY REDUCTION IN THE FAIR RENTAL VALUE OF THE DWELLING UNIT, IN ANY COURT OF COMPETENT JURISDICTION.

(2) IF A RENTAL AGREEMENT CONTAINS A PROVISION FOR EITHER PARTY IN AN ACTION RELATED TO THE RENTAL AGREEMENT TO OBTAIN ATTORNEY FEES AND COSTS, THEN THE PREVAILING PARTY IN ANY ACTION BROUGHT UNDER THIS PART 5 SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEY FEES AND COSTS.

38-12-508. Landlord's defenses to a claim of breach of warranty - limitations on claiming a breach. (1) IT SHALL BE A DEFENSE TO A TENANT'S CLAIM OF BREACH OF THE WARRANTY OF HABITABILITY THAT THE TENANT'S ACTIONS OR INACTIONS PREVENTED THE LANDLORD FROM CURING THE CONDITION UNDERLYING THE BREACH OF THE WARRANTY OF HABITABILITY.

(2) ONLY PARTIES TO THE RENTAL AGREEMENT OR OTHER ADULT RESIDENTS LISTED ON THE RENTAL AGREEMENT WHO ARE ALSO LAWFULLY RESIDING IN THE DWELLING UNIT MAY ASSERT A CLAIM FOR A BREACH OF THE WARRANTY OF HABITABILITY.

(3) A TENANT MAY NOT ASSERT A CLAIM FOR INJUNCTIVE RELIEF BASED UPON THE LANDLORD'S BREACH OF THE WARRANTY OF HABITABILITY OF A RESIDENTIAL PREMISES UNLESS THE TENANT HAS GIVEN NOTICE TO A LOCAL GOVERNMENT WITHIN THE BOUNDARIES OF WHICH THE RESIDENTIAL PREMISES IS LOCATED OF THE CONDITION UNDERLYING THE BREACH THAT IS MATERIALLY DANGEROUS OR HAZARDOUS TO THE TENANT'S LIFE, HEALTH, OR SAFETY.

(4) A TENANT MAY NOT ASSERT A BREACH OF THE WARRANTY OF HABITABILITY AS A DEFENSE TO A LANDLORD'S ACTION FOR POSSESSION BASED UPON A NONMONETARY VIOLATION OF THE RENTAL AGREEMENT OR FOR AN ACTION FOR POSSESSION BASED UPON A NOTICE TO QUIT OR VACATE.

(5) IF THE CONDITION ALLEGED TO BREACH THE WARRANTY OF HABITABILITY IS THE RESULT OF THE ACTION OR INACTION OF A TENANT IN ANOTHER DWELLING UNIT OR ANOTHER THIRD PARTY NOT UNDER THE

DIRECTION AND CONTROL OF THE LANDLORD AND THE LANDLORD HAS TAKEN REASONABLE, NECESSARY, AND TIMELY STEPS TO ABATE THE CONDITION, BUT IS UNABLE TO ABATE THE CONDITION DUE TO CIRCUMSTANCES BEYOND THE LANDLORD'S REASONABLE CONTROL, THE TENANT'S ONLY REMEDY SHALL BE TERMINATION OF THE RENTAL AGREEMENT CONSISTENT WITH SECTION 38-12-507 (1) (a).

(6) FOR PUBLIC HOUSING AUTHORITIES AND OTHER HOUSING PROVIDERS RECEIVING FEDERAL FINANCIAL ASSISTANCE DIRECTLY FROM THE FEDERAL GOVERNMENT, NO PROVISION OF THIS PART 5 IN DIRECT CONFLICT WITH ANY FEDERAL LAW OR REGULATION SHALL BE ENFORCEABLE AGAINST SUCH HOUSING PROVIDER.

38-12-509. Prohibition on retaliation. (1) A LANDLORD SHALL NOT RETALIATE AGAINST A TENANT FOR ALLEGING A BREACH OF THE WARRANTY OF HABITABILITY BY DISCRIMINATORILY INCREASING RENT OR DECREASING SERVICES OR BY BRINGING OR THREATENING TO BRING AN ACTION FOR POSSESSION IN RESPONSE TO THE TENANT HAVING MADE A GOOD FAITH COMPLAINT TO THE LANDLORD OR TO A GOVERNMENTAL AGENCY ALLEGING A BREACH OF THE WARRANTY OF HABITABILITY.

(2) A LANDLORD SHALL NOT BE LIABLE FOR RETALIATION UNDER THIS SECTION, UNLESS A TENANT PROVES THAT A LANDLORD BREACHED THE WARRANTY OF HABITABILITY.

(3) REGARDLESS OF WHEN AN ACTION FOR POSSESSION OF THE PREMISES WHERE THE LANDLORD IS SEEKING TO TERMINATE THE TENANCY FOR VIOLATION OF THE TERMS OF THE RENTAL AGREEMENT IS BROUGHT, THERE SHALL BE A REBUTTABLE PRESUMPTION IN FAVOR OF THE LANDLORD THAT HIS OR HER DECISION TO TERMINATE IS NOT RETALIATORY. THE PRESUMPTION CREATED BY THIS SUBSECTION (3) CANNOT BE REBUTTED BY EVIDENCE OF THE TIMING ALONE OF THE LANDLORD'S INITIATION OF THE ACTION.

(4) IF THE LANDLORD HAS A RIGHT TO INCREASE RENT, TO DECREASE SERVICE, OR TO TERMINATE THE TENANT'S TENANCY AT THE END OF ANY TERM OF THE RENTAL AGREEMENT AND THE LANDLORD EXERCISES ANY OF THESE RIGHTS, THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE LANDLORD'S EXERCISE OF ANY OF THESE RIGHTS WAS NOT RETALIATORY. THE PRESUMPTION OF THIS SUBSECTION (4) CANNOT BE REBUTTED BY

EVIDENCE OF THE TIMING ALONE OF THE LANDLORD'S EXERCISE OF ANY OF THESE RIGHTS.

38-12-510. Unlawful removal or exclusion. IT SHALL BE UNLAWFUL FOR A LANDLORD TO REMOVE OR EXCLUDE A TENANT FROM A DWELLING UNIT WITHOUT RESORTING TO COURT PROCESS, UNLESS THE REMOVAL OR EXCLUSION IS CONSISTENT WITH THE PROVISIONS OF ARTICLE 18.5 OF TITLE 25, C.R.S., AND THE RULES PROMULGATED BY THE STATE BOARD OF HEALTH FOR THE CLEANUP OF AN ILLEGAL DRUG LABORATORY OR IS WITH THE MUTUAL CONSENT OF THE LANDLORD AND TENANT OR UNLESS THE DWELLING UNIT HAS BEEN ABANDONED BY THE TENANT AS EVIDENCED BY THE RETURN OF KEYS, THE SUBSTANTIAL REMOVAL OF THE TENANT'S PERSONAL PROPERTY, NOTICE BY THE TENANT, OR THE EXTENDED ABSENCE OF THE TENANT WHILE RENT REMAINS UNPAID, ANY OF WHICH WOULD CAUSE A REASONABLE PERSON TO BELIEVE THE TENANT HAD PERMANENTLY SURRENDERED POSSESSION OF THE DWELLING UNIT. SUCH UNLAWFUL REMOVAL OR EXCLUSION INCLUDES THE WILLFUL TERMINATION OF UTILITIES OR THE WILLFUL REMOVAL OF DOORS, WINDOWS, OR LOCKS TO THE PREMISES OTHER THAN AS REQUIRED FOR REPAIR OR MAINTENANCE. IF THE LANDLORD WILLFULLY AND UNLAWFULLY REMOVES THE TENANT FROM THE PREMISES OR WILLFULLY AND UNLAWFULLY CAUSES THE TERMINATION OF HEAT, RUNNING WATER, HOT WATER, ELECTRIC, GAS, OR OTHER ESSENTIAL SERVICES, THE TENANT MAY SEEK ANY REMEDY AVAILABLE UNDER THE LAW, INCLUDING THIS PART 5.

38-12-511. Application. (1) UNLESS CREATED TO AVOID ITS APPLICATION, THIS PART 5 SHALL NOT APPLY TO ANY OF THE FOLLOWING ARRANGEMENTS:

(a) RESIDENCE AT A PUBLIC OR PRIVATE INSTITUTION, IF SUCH RESIDENCE IS INCIDENTAL TO DETENTION OR THE PROVISION OF MEDICAL, GERIATRIC, EDUCATION, COUNSELING, RELIGIOUS, OR SIMILAR SERVICE;

(b) OCCUPANCY UNDER A CONTRACT OF SALE OF A DWELLING UNIT OR THE PROPERTY OF WHICH IT IS A PART, IF THE OCCUPANT IS THE PURCHASER, SELLER, OR A PERSON WHO SUCCEEDS TO HIS OR HER INTEREST;

(c) OCCUPANCY BY A MEMBER OF A FRATERNAL OR SOCIAL ORGANIZATION IN THE PORTION OF A STRUCTURE OPERATED FOR THE BENEFIT OF THE ORGANIZATION;

(d) TRANSIENT OCCUPANCY IN A HOTEL OR MOTEL THAT LASTS LESS THAN THIRTY DAYS;

(e) OCCUPANCY BY AN EMPLOYEE OR INDEPENDENT CONTRACTOR WHOSE RIGHT TO OCCUPANCY IS CONDITIONAL UPON PERFORMANCE OF SERVICES FOR AN EMPLOYER OR CONTRACTOR;

(f) OCCUPANCY BY AN OWNER OF A CONDOMINIUM UNIT OR A HOLDER OF A PROPRIETARY LEASE IN A COOPERATIVE;

(g) OCCUPANCY IN A STRUCTURE THAT IS LOCATED WITHIN AN UNINCORPORATED AREA OF A COUNTY, DOES NOT RECEIVE WATER, HEAT, AND SEWER SERVICES FROM A PUBLIC ENTITY, AND IS RENTED FOR RECREATIONAL PURPOSES, SUCH AS A HUNTING CABIN, YURT, HUT, OR OTHER SIMILAR STRUCTURE;

(h) OCCUPANCY UNDER RENTAL AGREEMENT COVERING A RESIDENTIAL PREMISES USED BY THE OCCUPANT PRIMARILY FOR AGRICULTURAL PURPOSES; OR

(i) ANY RELATIONSHIP BETWEEN THE OWNER OF A MOBILE HOME PARK AND THE OWNER OF A MOBILE HOME SITUATED IN THE PARK.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT REMEDIES AVAILABLE ELSEWHERE IN LAW FOR A TENANT TO SEEK TO MAINTAIN SAFE AND SANITARY HOUSING.

SECTION 4. Effective date - applicability. (1) This act shall take effect September 1, 2008.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) This act shall apply to rental agreements entered into or extended or renewed on or after the effective date of this act.

Andrew Romanoff SPEAKER OF THE HOUSE OF REPRESENTATIVES	Peter C. Groff PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO