

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 08-0071.01 Ed DeCecco

HOUSE BILL 08-1356

HOUSE SPONSORSHIP

Merrifield, Kefalas, Soper, and Weissmann

SENATE SPONSORSHIP

Tupa and Boyd,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LANDLORD AND TENANT RELATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits a residential landlord or tenant who prevails in a forcible entry and detainer action from recovering attorney fees, unless the residential rental agreement contains a provision for either party to obtain attorney fees.

Creates a warranty of habitability in every rental agreement for a residential premises. Establishes that the warranty is breached if:

- ! A residential premises is uninhabitable or unfit for the uses reasonably intended by the parties;
- ! The residential premises is in a condition that is materially

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

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

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

Establishes the notice a landlord must receive. Prohibits misconduct by a tenant or a person under the tenant's control from constituting a breach of the warranty. Establishes that a residential premises is considered uninhabitable when it substantially lacks specified characteristics. Prohibits a deficiency in a common area from rendering a residential premises uninhabitable, unless it materially and substantially limits the tenant's use of his or her dwelling unit. Permits a tenant in certain circumstances to assume responsibility for one or more of these characteristics.

Imposes upon every tenant of a residential premises a duty to use that portion of the premises within the tenant's control in a reasonably clean and safe manner. Establishes what constitutes a failure to keep a premises in a reasonably clean and safe manner. Prohibits a tenant from knowingly, intentionally, deliberately, or negligently destroying, defacing, damaging, impairing, or removing any part of a dwelling unit or knowingly permitting any person within their control to do so.

Establishes a tenant's remedies for a breach of the warranty of habitability, which remedies include self-help, termination of the rental agreement, injunctive relief, and damages. Establishes who may allege the breach, when the breach may be used as a defense, requirements for using the breach as a defense to a claim for possession, and defenses to the allegation of a breach. Requires certain information related to the use of a breach of warranty of habitability as a defense to a claim for possession to be included in the summons for a forcible entry and detainer action.

Prohibits a landlord from retaliating against a tenant who proves a breach of the warranty of habitability.

Prohibits a landlord from removing or excluding a tenant from a residential premises without resorting to court process, with specified exceptions. Establishes that, if a 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 act or any other law.

Makes legislative findings and declarations that the provisions of the act are a matter of statewide concern. Establishes the underlying purposes and policies of the act.

Defines terms.

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

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

4 **13-40-111. Issuance and return of summons.** (1) Upon filing
5 the complaint as provided in section 13-40-110, the clerk of the court or
6 the attorney for the plaintiff shall issue a summons. The summons shall
7 command the defendant to appear before the court at a place named in
8 such summons and at a time and on a day which shall be not less than five
9 business days nor more than ten calendar days from the day of issuing the
10 same to answer the complaint of plaintiff. The summons shall also
11 contain a statement addressed to the defendant stating: "If you fail to file
12 with the court, at or before the time for appearance specified in the
13 summons, an answer to the complaint setting forth the grounds upon
14 which you base your claim for possession and denying or admitting all of
15 the material allegations of the complaint, judgment by default may be
16 taken against you for the possession of the property described in the
17 complaint, for the rent, if any, due or to become due, for present and
18 future damages and costs, and for any other relief to which the plaintiff
19 is entitled. IF YOU ARE CLAIMING THAT THE LANDLORD'S FAILURE TO
20 REPAIR THE RESIDENTIAL PREMISES IS A DEFENSE TO THE LANDLORD'S
21 ALLEGATION OF NONPAYMENT OF RENT, THE COURT WILL REQUIRE YOU TO
22 PAY INTO THE REGISTRY OF THE COURT, AT THE TIME OF FILING YOUR
23 ANSWER, THE RENT DUE LESS ANY EXPENSES YOU HAVE INCURRED BASED
24 UPON THE LANDLORD'S FAILURE TO REPAIR THE RESIDENTIAL PREMISES."

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

27 **13-40-123. Damages.** The prevailing party in any action brought

1 under the provisions of this article is entitled to recover damages,
2 reasonable attorney fees, and costs of suit; EXCEPT THAT A RESIDENTIAL
3 LANDLORD OR TENANT WHO IS A PREVAILING PARTY SHALL NOT BE
4 ENTITLED TO RECOVER REASONABLE ATTORNEY FEES UNLESS THE
5 RESIDENTIAL RENTAL AGREEMENT BETWEEN THE PARTIES CONTAINS A
6 PROVISION FOR EITHER PARTY TO OBTAIN ATTORNEY FEES. Nothing in this
7 section shall be construed to permit the entry of judgments in any single
8 proceeding in excess of the jurisdictional limit of said court.

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

11 **PART 5**

12 **OBLIGATION TO MAINTAIN RESIDENTIAL PREMISES -**
13 **UNLAWFUL REMOVAL**

14 **38-12-501. Legislative declaration - matter of statewide**
15 **concern - purposes and policies.** (1) THE GENERAL ASSEMBLY HEREBY
16 FINDS AND DECLARES THAT THE PROVISIONS OF THIS PART 5 ARE A MATTER
17 OF STATEWIDE CONCERN. ANY LOCAL GOVERNMENT ORDINANCE,
18 RESOLUTION, OR OTHER REGULATION THAT IS IN CONFLICT WITH THIS PART
19 5 SHALL BE UNENFORCEABLE.

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

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

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

27 (c) MAKE UNIFORM THE LAW WITH RESPECT TO THE SUBJECT OF

1 THIS PART 5 THROUGHOUT COLORADO.

2 **38-12-502. Definitions.** AS USED IN THIS PART 5, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

20 **38-12-503. Warranty of habitability.** (1) IN EVERY RENTAL
21 AGREEMENT, THE LANDLORD IS DEEMED TO WARRANT THAT THE
22 RESIDENTIAL PREMISES IS FIT FOR HUMAN HABITATION AND THE USES
23 REASONABLY INTENDED BY THE PARTIES.

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

26 (I) A RESIDENTIAL PREMISES IS UNINHABITABLE AS DESCRIBED IN
27 SECTION 38-12-505 OR UNFIT FOR THE USES REASONABLY INTENDED BY

1 THE PARTIES; AND

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

5 (III) THE LANDLORD HAS RECEIVED NOTICE OF THE CONDITION
6 DESCRIBED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (a) AND
7 FAILED TO CURE THE PROBLEM WITHIN A REASONABLE TIME.

8 (b) AS USED IN THIS SUBSECTION (2), A LANDLORD SHALL BE
9 DEEMED TO HAVE RECEIVED NOTICE OF THE CONDITION IF:

10 (I) THE LANDLORD HAS RECEIVED WRITTEN NOTICE OF THE
11 CONDITION; OR

12 (II) THE TENANT CAN SHOW THE LANDLORD'S ACTUAL NOTICE OF
13 THE CONDITION AND THE TENANT'S REQUEST FOR THE LANDLORD TO CURE
14 THE PROBLEM. IN THE ABSENCE OF THE WRITTEN NOTICE REQUIRED BY
15 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THERE SHALL BE A
16 REBUTTABLE PRESUMPTION THAT THE LANDLORD DOES NOT HAVE ACTUAL
17 NOTICE OF THE CONDITION AND THE TENANT'S REQUEST THAT THE
18 PROBLEM BE CURED.

19 (3) WHEN ANY CONDITION DESCRIBED IN SUBSECTION (2) OF THIS
20 SECTION IS CAUSED BY THE MISCONDUCT OF THE TENANT, A MEMBER OF
21 THE TENANT'S HOUSEHOLD, A GUEST OR INVITEE OF THE TENANT, OR A
22 PERSON UNDER THE TENANT'S DIRECTION OR CONTROL, THE CONDITION
23 SHALL NOT CONSTITUTE A BREACH OF THE WARRANTY OF HABITABILITY.
24 IT SHALL NOT BE MISCONDUCT BY A VICTIM OF DOMESTIC VIOLENCE OR
25 DOMESTIC ABUSE UNDER THIS SUBSECTION (3) IF THE CONDITION IS THE
26 RESULT OF DOMESTIC VIOLENCE OR DOMESTIC ABUSE AND THE LANDLORD
27 HAS BEEN GIVEN WRITTEN NOTICE AND EVIDENCE OF DOMESTIC VIOLENCE

1 OR DOMESTIC ABUSE AS DESCRIBED IN SECTION 38-12-402 (2) (a).

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

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

10 (6) NOTHING IN THIS PART 5 SHALL:

11 (a) PREVENT A LANDLORD FROM TERMINATING A RENTAL
12 AGREEMENT AS A RESULT OF A CASUALTY OR CATASTROPHE TO THE
13 DWELLING UNIT WITHOUT FURTHER LIABILITY TO THE LANDLORD OR
14 TENANT; OR

15 (b) PRECLUDE A LANDLORD FROM INITIATING AN ACTION FOR
16 NONPAYMENT OF RENT, BREACH OF THE RENTAL AGREEMENT, VIOLATION
17 OF SECTION 38-12-504, OR AS PROVIDED FOR UNDER ARTICLE 40 OF TITLE
18 13, C.R.S.

19 **38-12-504. Tenant's maintenance of premises.** (1) IN ADDITION
20 TO ANY DUTIES IMPOSED UPON A TENANT BY A RENTAL AGREEMENT,
21 EVERY TENANT OF A RESIDENTIAL PREMISES HAS A DUTY TO USE THAT
22 PORTION OF THE PREMISES WITHIN THE TENANT'S CONTROL IN A
23 REASONABLY CLEAN AND SAFE MANNER. A TENANT FAILS TO MAINTAIN
24 THE PREMISES IN A REASONABLY CLEAN AND SAFE MANNER WHEN THE
25 TENANT SUBSTANTIALLY FAILS TO:

26 (a) COMPLY WITH OBLIGATIONS IMPOSED UPON TENANTS BY
27 APPLICABLE PROVISIONS OF BUILDING, HEALTH, AND HOUSING CODES

1 MATERIALLY AFFECTING HEALTH AND SAFETY;

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

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

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

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

14 OR

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

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

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

27 **38-12-505. Uninhabitable residential premises.** (1) A

1 RESIDENTIAL PREMISES IS DEEMED UNINHABITABLE IF IT SUBSTANTIALLY
2 LACKS ANY OF THE FOLLOWING CHARACTERISTICS:

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

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

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

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

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

18 (f) COMMON AREAS AND AREAS UNDER THE CONTROL OF THE
19 LANDLORD THAT ARE KEPT REASONABLY CLEAN, SANITARY, AND FREE
20 FROM ALL ACCUMULATIONS OF DEBRIS, FILTH, RUBBISH, GARBAGE, AND
21 INFESTATION OF RODENTS OR VERMIN;

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

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

27 (i) FLOORS, STAIRWAYS, AND RAILINGS MAINTAINED IN GOOD

1 REPAIR;

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

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

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

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

17 **38-12-506. Opt-out.** (1) IF A DWELLING UNIT IS CONTAINED
18 WITHIN A MOBILE HOME PARK, AS DEFINED IN SECTION 38-12-201.5 (3), OR
19 IF THERE ARE FOUR OR FEWER DWELLING UNITS SHARING COMMON WALLS
20 OR LOCATED ON THE SAME PARCEL, AS DEFINED IN SECTION 30-28-302 (5),
21 C.R.S., ALL OF WHICH HAVE THE SAME OWNER:

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

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

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

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

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

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

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

22 (b) THE TENANT HAS THE REQUISITE SKILLS TO PERFORM THE
23 WORK REQUIRED TO CURE A FAILURE TO COMPLY WITH SECTION 38-12-505
24 (3).

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

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

5 **38-12-507. Breach of warranty of habitability - tenant's**
6 **remedies.** (1) IF THERE IS A BREACH OF THE WARRANTY OF HABITABILITY
7 AS SET FORTH IN SECTION 38-12-503 (2), THE FOLLOWING PROVISIONS
8 SHALL APPLY:

9 (a) UPON REASONABLE WRITTEN NOTICE TO THE LANDLORD, AND
10 AFTER OBTAINING ANY LICENSES OR PERMITS AS REQUIRED BY LAW, A
11 TENANT MAY CAUSE SUCH REPAIRS TO BE DONE IN A WORKMANLIKE
12 MANNER AS ARE NECESSARY TO CURE THE BREACH OF THE WARRANTY OF
13 HABITABILITY, AND, AFTER SUBMITTING TO THE LANDLORD ITEMIZED
14 RECEIPTS, DEDUCT FROM THE TENANT'S RENT THE REASONABLE AND
15 ACTUAL COST OF THE REPAIRS INCURRED, NOT TO EXCEED FOUR HUNDRED
16 DOLLARS IN ANY MONTH OR ONE THOUSAND DOLLARS IN ANY
17 TWELVE-MONTH PERIOD. ANY REPAIR WORK PERFORMED UNDER THE
18 PROVISIONS OF THIS SECTION SHALL COMPLY WITH THE REQUIREMENTS
19 IMPOSED BY ANY APPLICABLE CODE, STATUTE, ORDINANCE, OR
20 REGULATION. A LANDLORD WHOSE REAL OR PERSONAL PROPERTY IS
21 DAMAGED BECAUSE OF REPAIRS PERFORMED IN A NEGLIGENT MANNER,
22 MAY RECOVER THE ACTUAL DAMAGES IN AN ACTION AGAINST THE
23 TENANT. THE LANDLORD SHALL NOT BE LIABLE TO ANY PERSON
24 FURNISHING LABOR AND MATERIALS UNDER THIS SECTION, AND SUCH
25 PERSON SHALL NOT HAVE A LIEN FOR SUCH LABOR AND MATERIALS.

26 (b) UPON NO LESS THAN TEN AND NO MORE THAN THIRTY DAYS
27 WRITTEN NOTICE TO THE LANDLORD SPECIFYING THE CONDITION ALLEGED

1 TO BREACH OF THE WARRANTY OF HABITABILITY AND GIVING THE
2 LANDLORD FIVE BUSINESS DAYS FROM THE RECEIPT OF THE WRITTEN
3 NOTICE TO REMEDY THE BREACH, A TENANT MAY TERMINATE THE RENTAL
4 AGREEMENT BY SURRENDERING POSSESSION OF THE DWELLING UNIT. IF
5 THE BREACH IS REMEDIABLE BY REPAIRS, THE PAYMENT OF DAMAGES, OR
6 OTHERWISE AND THE LANDLORD ADEQUATELY REMEDIES THE BREACH
7 WITHIN FIVE BUSINESS DAYS OF RECEIPT OF THE NOTICE, THE RENTAL
8 AGREEMENT SHALL NOT TERMINATE BY REASON OF THE BREACH.

9 (c) A TENANT MAY OBTAIN INJUNCTIVE RELIEF FOR BREACH OF THE
10 WARRANTY OF HABITABILITY IN ANY COURT OF COMPETENT JURISDICTION.
11 IN ANY PROCEEDING FOR INJUNCTIVE RELIEF, THE COURT SHALL
12 DETERMINE ACTUAL DAMAGES FOR A BREACH OF THE WARRANTY AT THE
13 TIME THE COURT ORDERS THE INJUNCTIVE RELIEF. A LANDLORD SHALL
14 NOT BE SUBJECT TO ANY COURT ORDER FOR INJUNCTIVE RELIEF IF THE
15 LANDLORD TENDERS TO THE COURT THE ACTUAL DAMAGES TO THE COURT
16 WITHIN TWO BUSINESS DAYS OF THE ORDER. UPON APPLICATION BY THE
17 TENANT, THE COURT SHALL IMMEDIATELY RELEASE TO THE TENANT THE
18 DAMAGES PAID BY THE LANDLORD. IF THE TENANT VACATES THE LEASED
19 PREMISES, THE LANDLORD SHALL NOT BE PERMITTED TO RENT THE
20 PREMISES AGAIN UNTIL SUCH TIME AS THE UNIT WOULD BE IN COMPLIANCE
21 WITH THE WARRANTY OF HABITABILITY SET FORTH IN SECTION 38-12-503
22 (1).

23 (d) IN AN ACTION FOR POSSESSION BASED UPON NONPAYMENT OF
24 RENT IN WHICH THE TENANT ASSERTS A DEFENSE TO POSSESSION BASED
25 UPON THE LANDLORD'S ALLEGED BREACH OF THE WARRANTY OF
26 HABITABILITY, THE COURT SHALL ORDER THE TENANT TO PAY INTO THE
27 REGISTRY OF THE COURT AT THE TIME OF THE FILING OF THE ANSWER ALL

1 OR PART OF THE RENT ACCRUED AFTER DUE CONSIDERATION OF EXPENSES
2 ALREADY INCURRED BY THE TENANT BASED UPON THE LANDLORD'S
3 BREACH OF THE WARRANTY OF HABITABILITY.

4 (e) UPON JUDGMENT IN THE TENANT'S FAVOR FOR A CLAIM OR
5 COUNTERCLAIM OF BREACH OF THE WARRANTY OF HABITABILITY, A
6 TENANT MAY RECOVER DAMAGES DIRECTLY ARISING FROM THE BREACH,
7 WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, ANY REDUCTION IN THE
8 FAIR RENTAL VALUE OF THE DWELLING UNIT.

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

14 **38-12-508. Landlord's defenses to a claim of breach of**
15 **warranty - limitations on claiming a breach.** (1) IT SHALL BE A
16 DEFENSE TO A TENANT'S CLAIM OF BREACH OF THE WARRANTY OF
17 HABITABILITY THAT THE TENANT'S ACTIONS OR INACTIONS PREVENTED
18 THE LANDLORD FROM CURING THE CONDITION UNDERLYING THE BREACH
19 OF THE WARRANTY OF HABITABILITY.

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

24 (3) A TENANT MAY NOT ASSERT A BREACH OF THE WARRANTY OF
25 HABITABILITY AS A DEFENSE TO A LANDLORD'S ACTION FOR POSSESSION
26 BASED UPON A NONMONETARY VIOLATION OF THE RENTAL AGREEMENT OR
27 FOR AN ACTION FOR POSSESSION BASED UPON A NOTICE TO QUIT OR

1 VACATE.

2 (4) IF THE CONDITION ALLEGED OF BREACH THE WARRANTY OF
3 HABITABILITY IS THE RESULT OF THE ACTION OR INACTION OF A TENANT IN
4 ANOTHER DWELLING UNIT OR ANOTHER THIRD PARTY NOT UNDER THE
5 DIRECTION AND CONTROL OF THE LANDLORD AND THE LANDLORD HAS
6 TAKEN REASONABLE, NECESSARY, AND TIMELY STEPS TO ABATE THE
7 CONDITION, BUT IS UNABLE TO ABATE THE CONDITION DUE TO
8 CIRCUMSTANCES BEYOND THE LANDLORD'S REASONABLE CONTROL, THE
9 TENANT'S ONLY REMEDY SHALL BE TERMINATION OF THE RENTAL
10 AGREEMENT CONSISTENT WITH SECTION 38-12-507 (1) (b).

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

16 **38-12-509. Prohibition on retaliation.** (1) A LANDLORD SHALL
17 NOT RETALIATE AGAINST A TENANT FOR ALLEGING A BREACH OF THE
18 WARRANTY OF HABITABILITY BY DISCRIMINATORILY INCREASING RENT OR
19 DECREASING SERVICES OR BY BRINGING OR THREATENING TO BRING AN
20 ACTION FOR POSSESSION IN RESPONSE TO THE TENANT HAVING MADE A
21 GOOD FAITH COMPLAINT TO THE LANDLORD OR TO A GOVERNMENTAL
22 AGENCY ALLEGING A BREACH OF THE WARRANTY OF HABITABILITY.

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

26 (3) REGARDLESS OF WHEN BROUGHT, AN ACTION FOR POSSESSION
27 OF THE PREMISES WHERE THE LANDLORD IS SEEKING TO TERMINATE THE

1 TENANCY FOR VIOLATION OF THE TERMS OF THE RENTAL AGREEMENT,
2 THERE SHALL BE A REBUTTABLE PRESUMPTION IN FAVOR OF THE
3 LANDLORD THAT HIS OR HER DECISION TO TERMINATE IS NOT
4 RETALIATORY. THE PRESUMPTION CREATED BY THIS SUBSECTION (3)
5 CANNOT BE REBUTTED BY EVIDENCE OF THE TIMING ALONE OF THE
6 LANDLORD'S INITIATION OF THE ACTION.

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

15 **38-12-510. Unlawful removal or exclusion.** IT SHALL BE
16 UNLAWFUL FOR A LANDLORD TO REMOVE OR EXCLUDE A TENANT FROM A
17 DWELLING UNIT WITHOUT RESORTING TO COURT PROCESS, UNLESS THE
18 REMOVAL OR EXCLUSION IS WITH THE MUTUAL CONSENT OF THE
19 LANDLORD AND TENANT OR THE DWELLING UNIT HAS BEEN ABANDONED
20 BY THE TENANT AS EVIDENCED BY THE RETURN OF KEYS, THE
21 SUBSTANTIAL REMOVAL OF THE TENANT'S PERSONAL PROPERTY, NOTICE
22 BY THE TENANT, OR THE EXTENDED ABSENCE OF THE TENANT WHILE RENT
23 REMAINS UNPAID, ANY OF WHICH WOULD CAUSE A REASONABLE PERSON
24 TO BELIEVE THE TENANT HAD PERMANENTLY SURRENDERED POSSESSION
25 OF THE DWELLING UNIT. SUCH UNLAWFUL REMOVAL OR EXCLUSION
26 INCLUDES THE WILLFUL TERMINATION OF UTILITIES OR THE WILLFUL
27 REMOVAL OF DOORS, WINDOWS, OR LOCKS TO THE PREMISES OTHER THAN

1 AS REQUIRED FOR REPAIR OR MAINTENANCE. IF THE LANDLORD
2 WILLFULLY AND UNLAWFULLY REMOVES THE TENANT FROM THE PREMISES
3 OR WILLFULLY AND UNLAWFULLY CAUSES THE TERMINATION OF HEAT,
4 RUNNING WATER, HOT WATER, ELECTRIC, GAS, OR OTHER ESSENTIAL
5 SERVICES, THE TENANT MAY SEEK ANY REMEDY AVAILABLE UNDER THE
6 LAW, INCLUDING THIS PART 5.

7 **38-12-511. Application.** (1) UNLESS CREATED TO AVOID ITS
8 APPLICATION, THIS PART 5 SHALL NOT APPLY TO ANY OF THE FOLLOWING
9 ARRANGEMENTS:

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

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

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

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

22 (e) OCCUPANCY BY AN EMPLOYEE OR INDEPENDENT CONTRACTOR
23 OF A LANDLORD WHOSE RIGHT TO OCCUPANCY IS CONDITIONAL UPON
24 PERFORMANCE OF SERVICES IN AND ABOUT THE RESIDENTIAL PREMISES;

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

27 (g) OCCUPANCY UNDER RENTAL AGREEMENT COVERING A

1 RESIDENTIAL PREMISES USED BY THE OCCUPANT PRIMARILY FOR
2 AGRICULTURAL PURPOSES; OR

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

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

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

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