

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0454.01 Yelana Love x2295

SENATE BILL 17-038

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SENATE SPONSORSHIP

Todd,

HOUSE SPONSORSHIP

(None),

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF HOME INSPECTORS.

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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/>.)*

Under current law, home inspectors are not subject to regulation by any state agency. **Section 1** of the bill makes it unlawful for a person to act as a home inspector without first registering with the department of regulatory agencies (DORA).

**Section 2** requires a review of the board's duties and functions in registering home inspectors after 5 years under the existing sunset laws.

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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.*

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 28.5 to  
3 title 12 as follows:

4 **ARTICLE 28.5**

5 **Home Inspectors**

6 **12-28.5-101. Definitions.** AS USED IN THIS ARTICLE 28.5, UNLESS  
7 THE CONTEXT OTHERWISE REQUIRES:

8 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF REGULATORY  
9 AGENCIES.

10 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

11 (3) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND  
12 OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

13 (4) "HOME INSPECTION" MEANS A LIMITED VISUAL SURVEY OF THE  
14 COMPONENTS OF A RESIDENTIAL BUILDING ACCORDING TO THE  
15 BOARD-APPROVED STANDARDS OF PRACTICE, WHICH COMPONENTS  
16 INCLUDE: HEATING SYSTEMS; COOLING SYSTEMS; PLUMBING SYSTEMS;  
17 ELECTRICAL SYSTEMS; STRUCTURAL SYSTEMS, INCLUDING EXTERIOR AND  
18 INTERIOR SURFACES; FOUNDATION; AND ROOF.

19 (5) (a) "HOME INSPECTOR" MEANS A PERSON WHO IS ENGAGED IN  
20 HOME INSPECTIONS.

21 (b) "HOME INSPECTOR" DOES NOT INCLUDE THE FOLLOWING  
22 PROFESSIONALS ACTING WITHIN THE SCOPE OF THEIR PROFESSIONS:

23 (I) ANY PERSON REGISTERED, CERTIFIED, OR LICENSED BY THIS  
24 STATE;

25 (II) HVAC TECHNICIANS;

26 (III) ROOFING CONTRACTORS;

27 (IV) STATE, MUNICIPAL, OR COUNTY CODE INSPECTORS; OR

1 (V) INDUSTRIAL HYGIENISTS AND CERTIFIED INDUSTRIAL  
2 HYGIENISTS, AS DEFINED IN SECTION 24-30-1402.

3 (6) "HVAC TECHNICIAN" MEANS A PERSON WHO FABRICATES,  
4 INSTALLS, MAINTAINS, SERVICES, OR REPAIRS WARM AIR HEATING AND  
5 WATER HEATING SYSTEMS, HEAT PUMPS, COMPLETE WITH WARM AIR  
6 APPLIANCES, INCLUDING BOILERS, POOL HEATERS, SPACE HEATERS,  
7 DECORATIVE GAS AND SOLID-FUEL-BURNING APPLIANCES, AND GAS,  
8 PROPANE, ELECTRIC, OR OIL-FIRED WATER HEATERS; VENTILATING  
9 SYSTEMS COMPLETE WITH BLOWERS AND PLENUM CHAMBERS; AIR  
10 CONDITIONING SYSTEMS COMPLETE WITH AIR CONDITIONING UNIT AND THE  
11 DUCTS, REGISTERS, FLUES, HUMIDITY AND THERMOSTATIC CONTROLS OF  
12 AIR, LIQUID OR GAS TEMPERATURES BELOW FIFTY DEGREES FAHRENHEIT  
13 OR TEN DEGREES CELSIUS; AND AIR FILTERS IN CONNECTION WITH ANY OF  
14 THESE SYSTEMS.

15 **12-28.5-102. Registration required - fees.** (1) A PERSON SHALL  
16 NOT ENGAGE IN ACTIVITIES AS A HOME INSPECTOR, ADVERTISE IN ANY  
17 PUBLICATION AS A HOME INSPECTOR, OR REPRESENT HIMSELF OR HERSELF  
18 AS A HOME INSPECTOR UNLESS THE PERSON FIRST OBTAINS A  
19 REGISTRATION FROM THE DIVISION AND UNLESS THE REGISTRATION IS IN  
20 FULL FORCE AND EFFECT AND A COPY OF THE REGISTRATION IS IN THE  
21 PERSON'S IMMEDIATE POSSESSION. A PERSON SHALL NOT CONTINUE TO ACT  
22 AS A HOME INSPECTOR IF THE PERSON'S REGISTRATION HAS BEEN  
23 SUSPENDED OR REVOKED OR HAS EXPIRED.

24 (2) AN APPLICANT FOR REGISTRATION AS A HOME INSPECTOR  
25 SHALL FOLLOW THE PROCEDURES PROVIDED IN SECTION 12-28.5-104 AND  
26 ANY OTHER PROCEDURES REQUIRED BY THE DIRECTOR. ALL APPLICANTS  
27 SHALL PAY A NONREFUNDABLE REGISTRATION FEE IN AN AMOUNT

1 DETERMINED BY THE DIRECTOR, WHICH AMOUNT MUST BE ADEQUATE TO  
2 COVER THE DIRECT AND INDIRECT EXPENSES INCURRED BY THE DIRECTOR  
3 FOR IMPLEMENTATION OF THIS ARTICLE 28.5. THE REGISTRATION IS  
4 RENEWABLE PURSUANT TO THIS ARTICLE 28.5 AND UPON PAYMENT OF THE  
5 FEE.

6 **12-28.5-103. Powers and duties of the director.** (1) IN  
7 ADDITION TO ALL OTHER POWERS AND DUTIES CONFERRED OR IMPOSED  
8 UPON THE DIRECTOR BY THIS ARTICLE 28.5 OR BY ANY OTHER LAW, THE  
9 DIRECTOR:

10 (a) MAY PROMULGATE RULES, IN ACCORDANCE WITH SECTION  
11 24-4-103, TO GOVERN THE REGISTRATION OF HOME INSPECTORS AND TO  
12 CARRY OUT THE PURPOSES OF THIS ARTICLE 28.5;

13 (b) (I) MAY ADMINISTER OATHS, TAKE AFFIRMATIONS OF  
14 WITNESSES, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF  
15 WITNESSES AND THE PRODUCTION OF ALL RELEVANT PAPERS, BOOKS,  
16 RECORDS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING,  
17 INVESTIGATION, ACCUSATION, OR OTHER MATTER COMING BEFORE THE  
18 DIRECTOR. THE DIRECTOR OF THE DEPARTMENT OF PERSONNEL MAY  
19 APPOINT AN ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF  
20 ARTICLE 30 OF TITLE 24, TO PERFORM THE FUNCTIONS SET FORTH IN THIS  
21 SUBSECTION (1)(b)(I) AND TO TAKE EVIDENCE AND TO MAKE FINDINGS  
22 AND REPORT THEM TO THE DIRECTOR.

23 (II) UPON THE FAILURE OF ANY WITNESS TO COMPLY WITH A  
24 SUBPOENA, THE DISTRICT COURT OF THE COUNTY IN WHICH THE  
25 SUBPOENAED PERSON OR REGISTRANT RESIDES OR CONDUCTS BUSINESS,  
26 UPON APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED  
27 PERSON OR REGISTRANT, MAY ISSUE TO THE PERSON OR REGISTRANT AN

1 ORDER REQUIRING THAT PERSON OR REGISTRANT TO APPEAR BEFORE THE  
2 DIRECTOR; TO PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS,  
3 DOCUMENTARY EVIDENCE, OR MATERIALS IF SO ORDERED; OR TO GIVE  
4 EVIDENCE RELEVANT TO THE MATTER UNDER INVESTIGATION OR IN  
5 QUESTION. FAILURE TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED  
6 BY THE COURT AS A CONTEMPT OF COURT.

7 (c) MAY APPLY FOR INJUNCTIVE RELIEF, IN THE MANNER PROVIDED  
8 BY THE COLORADO RULES OF CIVIL PROCEDURE, TO ENFORCE THIS ARTICLE  
9 28.5 OR TO RESTRAIN ANY VIOLATION OF THIS ARTICLE 28.5. IN SUCH  
10 PROCEEDINGS, IT SHALL NOT BE NECESSARY TO ALLEGE OR PROVE EITHER  
11 THAT AN ADEQUATE REMEDY AT LAW DOES NOT EXIST OR THAT  
12 SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT FROM THE  
13 CONTINUED VIOLATION OF THIS ARTICLE 28.5.

14 **12-28.5-104. Issuance of registration - violations.** (1) EXCEPT  
15 AS OTHERWISE PROVIDED IN THIS ARTICLE 28.5, THE DIRECTOR SHALL  
16 ISSUE AN INITIAL OR RENEWED REGISTRATION AS A HOME INSPECTOR TO  
17 AN INDIVIDUAL WHO PAYS THE REQUIRED FEE AND FURNISHES EVIDENCE  
18 SATISFACTORY TO THE DIRECTOR THAT THE INDIVIDUAL:

19 (a) POSSESSES MINIMUM LIABILITY INSURANCE COVERAGE IN THE  
20 AMOUNT OF FIFTY THOUSAND DOLLARS FOR PERSONAL INJURY TO ONE  
21 INDIVIDUAL IN A SINGLE ACCIDENT AND ONE HUNDRED THOUSAND  
22 DOLLARS FOR PERSONAL INJURY TO ALL INDIVIDUALS IN A SINGLE  
23 ACCIDENT;

24 (b) HAS SUBMITTED TO THE DIRECTOR A SURETY BOND IN THE  
25 MINIMUM SUM OF TEN THOUSAND DOLLARS, EXECUTED BY THE APPLICANT  
26 AS PRINCIPAL AND BY A SURETY COMPANY QUALIFIED AND AUTHORIZED  
27 TO DO BUSINESS IN THIS STATE AS SURETY. THE BOND MUST BE

1       CONDITIONED UPON COMPLIANCE WITH THIS ARTICLE 28.5 AND WITH THE  
2       RULES PROMULGATED UNDER THIS ARTICLE 28.5.

3           (2)     WITH THE SUBMISSION OF AN APPLICATION FOR A  
4       REGISTRATION PURSUANT TO THIS SECTION, EACH APPLICANT SHALL  
5       SUBMIT A COMPLETE SET OF HIS OR HER FINGERPRINTS TO THE  
6       DEPARTMENT. THE DEPARTMENT SHALL SUBMIT THE FINGERPRINTS TO THE  
7       COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING  
8       FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE COLORADO  
9       BUREAU OF INVESTIGATION SHALL FORWARD THE FINGERPRINTS TO THE  
10      FEDERAL BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING  
11      FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. THE  
12      DEPARTMENT MAY ACQUIRE A NAME-BASED CRIMINAL HISTORY RECORD  
13      CHECK FOR AN APPLICANT OR A REGISTRANT WHO HAS TWICE SUBMITTED  
14      TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK AND WHOSE  
15      FINGERPRINTS ARE UNCLASSIFIABLE. AN APPLICANT WHO HAS PREVIOUSLY  
16      SUBMITTED FINGERPRINTS FOR STATE OR LOCAL LICENSING PURPOSES MAY  
17      REQUEST THE USE OF THE FINGERPRINTS ON FILE. THE DEPARTMENT SHALL  
18      USE THE INFORMATION RESULTING FROM THE FINGERPRINT-BASED  
19      CRIMINAL HISTORY RECORD CHECK TO INVESTIGATE AND DETERMINE  
20      WHETHER AN APPLICANT IS QUALIFIED TO HOLD A REGISTRATION  
21      PURSUANT TO THIS SECTION. THE DEPARTMENT MAY VERIFY THE  
22      INFORMATION AN APPLICANT IS REQUIRED TO SUBMIT. THE APPLICANT  
23      SHALL PAY THE COSTS ASSOCIATED WITH THE FINGERPRINT-BASED  
24      CRIMINAL HISTORY RECORD CHECK TO THE COLORADO BUREAU OF  
25      INVESTIGATION.

26           (3) (a) RENEWALS AND REINSTATEMENTS OF A REGISTRATION ARE  
27      MADE UNDER A SCHEDULE ESTABLISHED BY THE DIRECTOR, AND

1 REGISTRATIONS MUST BE RENEWED OR REINSTATED IN ACCORDANCE WITH  
2 SECTION 24-34-102 (8).

3 (b) THE DIRECTOR MAY ESTABLISH RENEWAL FEES AND  
4 DELINQUENCY FEES FOR REINSTATEMENT IN ACCORDANCE WITH SECTION  
5 24-34-105.

6 (c) IF A PERSON FAILS TO RENEW A REGISTRATION IN ACCORDANCE  
7 WITH THE SCHEDULE ESTABLISHED BY THE DIRECTOR, THE REGISTRATION  
8 EXPIRES.

9 (d) A PERSON WHOSE REGISTRATION HAS EXPIRED AND WHO  
10 OFFERS OR PROVIDES HOME INSPECTION SERVICES IS SUBJECT TO THE  
11 PENALTIES PROVIDED IN THIS ARTICLE 28.5 OR SECTION 24-34-102 (8).

12 **12-28.5-105. Disciplinary actions - grounds for discipline.**

13 (1) THE DIRECTOR MAY DENY, SUSPEND, REVOKE, OR PLACE ON  
14 PROBATION A HOME INSPECTOR'S REGISTRATION OR ISSUE A LETTER OF  
15 ADMONITION TO AN APPLICANT FOR, OR HOLDER OF, A HOME INSPECTOR'S  
16 REGISTRATION IF THE APPLICANT OR HOLDER:

17 (a) VIOLATES ANY ORDER OF THE DIVISION OR THE DIRECTOR, THIS  
18 ARTICLE 28.5, OR THE RULES ESTABLISHED UNDER THIS ARTICLE 28.5;

19 (b) FAILS TO MEET THE REQUIREMENTS OF SECTION 12-28.5-104 OR  
20 USES FRAUD, MISREPRESENTATION, OR DECEIT IN APPLYING FOR OR  
21 ATTEMPTING TO APPLY FOR REGISTRATION;

22 (c) IS CONVICTED OF OR HAS ENTERED A PLEA OF NOLO  
23 CONTENDERE OR GUILTY TO A FELONY; EXCEPT THAT THE DIRECTOR SHALL  
24 BE GOVERNED BY SECTION 24-5-101 IN CONSIDERING SUCH CONVICTION  
25 OR PLEA;

26 (d) USES FALSE, DECEPTIVE, OR MISLEADING ADVERTISING;

27 (e) MISREPRESENTS HIS OR HER SERVICES, FACILITIES, OR

1 EQUIPMENT TO A CLIENT OR PROSPECTIVE CLIENT;

2 (f) HAS INCURRED DISCIPLINARY ACTION RELATED TO THE  
3 PRACTICE OF HOME INSPECTION IN ANOTHER JURISDICTION. EVIDENCE OF  
4 SUCH DISCIPLINARY ACTION IS PRIMA FACIE EVIDENCE OF A VIOLATION  
5 CONSTITUTING GROUNDS FOR DENIAL OF REGISTRATION OR OTHER  
6 DISCIPLINARY ACTION IF THE VIOLATION WOULD BE GROUNDS FOR SUCH  
7 DISCIPLINARY ACTION IN THIS STATE.

8 (g) FAILS TO RESPOND TO A COMPLAINT AGAINST THE REGISTERED  
9 HOME INSPECTOR.

10 (2) TO BE VALID, A PROCEEDING TO DENY, SUSPEND, REVOKE, OR  
11 PLACE ON PROBATION A REGISTRATION MUST BE CONDUCTED IN  
12 ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105. THE DIRECTOR  
13 MAY USE AN ADMINISTRATIVE LAW JUDGE EMPLOYED BY THE OFFICE OF  
14 ADMINISTRATIVE COURTS IN THE DEPARTMENT OF PERSONNEL, AS  
15 AUTHORIZED BY SECTION 12-28.5-103 (1)(b), TO CONDUCT HEARINGS.

16 (3) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN  
17 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES  
18 NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT SHOULD NOT BE  
19 DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY ISSUE AND SEND  
20 A LETTER OF ADMONITION TO THE REGISTRANT.

21 (b) (I) WHEN A LETTER OF ADMONITION IS SENT BY THE DIRECTOR  
22 TO A REGISTRANT, THE LETTER MUST ADVISE THE REGISTRANT THAT THE  
23 REGISTRANT HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY  
24 DAYS AFTER RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY  
25 PROCEEDINGS BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE  
26 CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED.

27 (II) IF THE REQUEST FOR ADJUDICATION IS TIMELY MADE, THE



1 LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE MATTER  
2 SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

3 (4) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN  
4 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE  
5 DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED,  
6 BUT THE DIRECTOR HAS NOTICED POSSIBLE ERRANT CONDUCT BY THE  
7 REGISTRANT THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT  
8 CORRECTED, THE DIRECTOR MAY SEND THE REGISTRANT A CONFIDENTIAL  
9 LETTER OF CONCERN.

10 (5) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN  
11 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR,  
12 WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY  
13 A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

14 (6) IF A PERSON'S REGISTRATION IS REVOKED UNDER THIS SECTION  
15 OR SURRENDERED IN LIEU OF DISCIPLINE, THE PERSON IS INELIGIBLE TO  
16 SUBMIT A NEW APPLICATION FOR REGISTRATION OR REGISTER FOR TWO  
17 YEARS AFTER THE DATE THE REGISTRATION IS REVOKED.

18 **12-28.5-106. Penalties - distribution of fines.** (1) ANY PERSON  
19 WHO VIOLATES THIS ARTICLE 28.5 OR THE RULES OF THE DIRECTOR  
20 PROMULGATED UNDER THIS ARTICLE 28.5 MAY BE PENALIZED BY THE  
21 DIRECTOR UPON A FINDING OF A VIOLATION IN ACCORDANCE WITH THE  
22 "STATE ADMINISTRATIVE PROCEDURES ACT", ARTICLE 4 OF TITLE 24, AS  
23 FOLLOWS:

24 (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1)(b) OF THIS  
25 SECTION:

26 (I) IN THE FIRST ADMINISTRATIVE PROCEEDING AGAINST ANY  
27 PERSON, A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS BUT NOT MORE

1 THAN FIVE HUNDRED DOLLARS PER VIOLATION;

2 (II) IN ANY SUBSEQUENT ADMINISTRATIVE PROCEEDING AGAINST  
3 ANY PERSON FOR TRANSACTIONS OCCURRING AFTER A FINAL AGENCY  
4 ACTION DETERMINING THAT A VIOLATION OF THIS ARTICLE 28.5 HAS  
5 OCCURRED, A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS BUT NOT  
6 MORE THAN TWO THOUSAND DOLLARS PER VIOLATION;

7 (b) IN AN ADMINISTRATIVE PROCEEDING AGAINST A PERSON FOR  
8 A VIOLATION OF SECTION 12-28.5-102 (1), A FINE OF NOT LESS THAN ONE  
9 THOUSAND DOLLARS BUT NOT MORE THAN FIVE THOUSAND DOLLARS PER  
10 VIOLATION.

11 (2) IN ADDITION TO THE PENALTIES PROVIDED IN SUBSECTION (1)  
12 OF THIS SECTION, THE DIRECTOR, UPON A FINDING OF A VIOLATION, MAY  
13 DENY, SUSPEND, REVOKE, OR PLACE ON PROBATION A HOME INSPECTOR'S  
14 REGISTRATION OR TAKE OTHER DISCIPLINARY ACTION AS PROVIDED IN  
15 SECTION 12-28.5-105 (3).

16 (3) A PERSON WHO ENGAGES IN ACTIVITIES AS A HOME INSPECTOR  
17 SHALL MAINTAIN, FOR THE CURRENT YEAR AND THE PRECEDING FOUR  
18 YEARS, AT THE ADDRESS LISTED ON THE REGISTRATION, ALL APPLICABLE  
19 DOCUMENTS, RECORDS, AND OTHER ITEMS REQUIRED TO BE MAINTAINED  
20 BY THIS ARTICLE 28.5 OR BY THE RULES OF THE DIRECTOR AND SHALL  
21 PERMIT THEIR INSPECTION AT REASONABLE TIMES WHEN REQUESTED TO DO  
22 SO BY THE DIRECTOR OR A PEACE OFFICER. A REGISTRANT WHO REFUSES  
23 TO PERMIT THE INSPECTION OF DOCUMENTS, RECORDS, OR ITEMS IS GUILTY  
24 OF A MISDEMEANOR AND SHALL BE PUNISHED BY A FINE OF ONE HUNDRED  
25 DOLLARS PER VIOLATION. EACH DAY OF A CONTINUING VIOLATION  
26 CONSTITUTES A SEPARATE VIOLATION.

27 (4) ALL FINES COLLECTED PURSUANT TO THIS ARTICLE 28.5 SHALL

1 BE DISTRIBUTED AS FOLLOWS:

2 (a) FIFTY PERCENT APPORTIONED APPROPRIATELY BY THE  
3 DIRECTOR AMONG ANY FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT  
4 AGENCIES ASSISTING WITH AN INVESTIGATION; AND

5 (b) FIFTY PERCENT TO THE DIVISION FOR THE COST OF  
6 ADMINISTERING THIS ARTICLE 28.5.

7 **12-28.5-107. Cease-and-desist orders - unauthorized practice**

8 - **penalties.** (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON  
9 CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY  
10 PERSON, THAT A REGISTRANT IS ACTING IN A MANNER THAT IS AN  
11 IMMINENT THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, OR A  
12 PERSON IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION,  
13 THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST THE ACTIVITY.  
14 THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO  
15 HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE  
16 VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR  
17 UNREGISTERED PRACTICES IMMEDIATELY CEASE.

18 (b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND  
19 DESIST PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE  
20 RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER  
21 ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE 28.5 HAVE OCCURRED.  
22 THE HEARING SHALL BE CONDUCTED PURSUANT TO SECTIONS 24-4-104  
23 AND 24-4-105.

24 (2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE  
25 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT  
26 A PERSON HAS VIOLATED ANY OTHER PORTION OF THIS ARTICLE 28.5,  
27 THEN, IN ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS

1 ARTICLE 28.5, THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO  
2 SHOW CAUSE AS TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER  
3 DIRECTING THE PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT  
4 OR UNREGISTERED PRACTICE.

5 (b) A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS  
6 BEEN ISSUED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION SHALL BE  
7 PROMPTLY NOTIFIED BY THE DIRECTOR OF THE ISSUANCE OF THE ORDER,  
8 ALONG WITH A COPY OF THE ORDER, THE FACTUAL AND LEGAL BASIS FOR  
9 THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A HEARING ON THE  
10 ORDER. THE NOTICE MAY BE SERVED BY PERSONAL SERVICE, BY  
11 FIRST-CLASS UNITED STATES MAIL, POSTAGE PREPAID, OR AS MAY BE  
12 PRACTICABLE UPON ANY PERSON AGAINST WHOM THE ORDER IS ISSUED.  
13 PERSONAL SERVICE OR MAILING OF AN ORDER OR DOCUMENT PURSUANT  
14 TO THIS SUBSECTION (2) CONSTITUTES NOTICE OF THE ORDER TO SHOW  
15 CAUSE TO THE PERSON.

16 (c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE SHALL BE  
17 COMMENCED NO SOONER THAN TEN AND NO LATER THAN FORTY-FIVE  
18 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE  
19 NOTIFICATION BY THE DIRECTOR AS PROVIDED IN SUBSECTION (2)(b) OF  
20 THIS SECTION. THE HEARING MAY BE CONTINUED BY AGREEMENT OF ALL  
21 PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF  
22 PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER,  
23 BUT IN NO EVENT SHALL THE HEARING COMMENCE LATER THAN SIXTY  
24 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE  
25 NOTIFICATION.

26 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS  
27 BEEN ISSUED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION DOES NOT

1 APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE THAT  
2 NOTIFICATION WAS PROPERLY SENT OR SERVED UPON THE PERSON  
3 PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION AND SUCH OTHER  
4 EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS  
5 APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS  
6 AFTER THE DIRECTOR'S DETERMINATION REGARDING REASONABLE  
7 ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER SHALL BECOME  
8 FINAL AS TO THAT PERSON BY OPERATION OF LAW. THE HEARING SHALL BE  
9 CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105.

10 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON  
11 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR  
12 HAS ACTED WITHOUT THE REQUIRED REGISTRATION, OR HAS OR IS ABOUT  
13 TO ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS  
14 ARTICLE 28.5, A FINAL CEASE-AND-DESIST ORDER MAY BE ISSUED,  
15 DIRECTING THE PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL  
16 ACTS OR UNREGISTERED PRACTICES.

17 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET  
18 FORTH IN SUBSECTION (2)(b) OF THIS SECTION, OF THE FINAL  
19 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE  
20 HEARING CONDUCTED PURSUANT TO THIS SUBSECTION (2)(c) TO EACH  
21 PERSON AGAINST WHOM THE ORDER WAS ISSUED. THE FINAL  
22 CEASE-AND-DESIST ORDER ISSUED PURSUANT TO SUBSECTION (2)(c)(III)  
23 OF THIS SECTION IS EFFECTIVE WHEN ISSUED AND CONSTITUTES A FINAL  
24 ORDER FOR PURPOSES OF JUDICIAL REVIEW.

25 (3) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE  
26 EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED IN  
27 OR IS ABOUT TO ENGAGE IN ANY UNREGISTERED ACT OR PRACTICE, ANY

1 ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE 28.5, ANY  
2 RULE PROMULGATED PURSUANT TO THIS ARTICLE 28.5, ANY ORDER ISSUED  
3 PURSUANT TO THIS ARTICLE 28.5, OR ANY ACT OR PRACTICE CONSTITUTING  
4 GROUNDS FOR ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE  
5 28.5, THE DIRECTOR MAY ENTER INTO A STIPULATION WITH SUCH PERSON.

6 (4) IF ANY PERSON FAILS TO COMPLY WITH A FINAL  
7 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY  
8 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE  
9 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,  
10 AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, SUIT FOR A  
11 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO  
12 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

13 (5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER  
14 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF  
15 THE DIRECTOR'S FINAL ORDER AS PROVIDED IN SECTION 12-28.5-110.

16 (6) ANY PERSON WHO ENGAGES OR OFFERS OR ATTEMPTS TO  
17 ENGAGE IN ACTIVITIES AS A HOME INSPECTOR WITHOUT AN ACTIVE  
18 REGISTRATION ISSUED UNDER THIS ARTICLE 28.5 COMMITS A CLASS 2  
19 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION  
20 18-1.3-501 FOR THE FIRST OFFENSE, AND FOR THE SECOND OR ANY  
21 SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 6 FELONY AND  
22 SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401.

23 **12-28.5-108. Immunity.** THE DIRECTOR, THE DIRECTOR'S STAFF,  
24 ANY PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR,  
25 ANY WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS  
26 ARTICLE 28.5, AND ANY PERSON WHO FILES A COMPLAINT UNDER THIS  
27 ARTICLE 28.5 IS IMMUNE FROM LIABILITY IN A CIVIL ACTION BROUGHT

1 AGAINST HIM OR HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER  
2 CAPACITY AS DIRECTOR, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY,  
3 IF THE PERSON WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR  
4 HER RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE  
5 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE  
6 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS  
7 WARRANTED BY THE FACTS. ANY PERSON PARTICIPATING IN GOOD FAITH  
8 IN FILING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR  
9 ADMINISTRATIVE PROCEEDING UNDER THIS ARTICLE 28.5 IS IMMUNE FROM  
10 CIVIL OR CRIMINAL LIABILITY RESULTING FROM THE PARTICIPATION.

11 **12-28.5-109. Fees - cash fund.** EXCEPT AS OTHERWISE PROVIDED  
12 IN THIS ARTICLE 28.5, ALL FEES COLLECTED PURSUANT TO THIS ARTICLE  
13 28.5 SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL  
14 CREDIT THEM TO THE DIVISION OF PROFESSIONS AND OCCUPATIONS CASH  
15 FUND CREATED IN SECTION 24-34-105 (2)(b). THE GENERAL ASSEMBLY  
16 SHALL MAKE ANNUAL APPROPRIATIONS FROM THE DIVISION OF  
17 PROFESSIONS AND OCCUPATIONS CASH FUND FOR EXPENDITURES OF THE  
18 DIVISION INCURRED IN THE PERFORMANCE OF ITS DUTIES UNDER THIS  
19 ARTICLE 28.5.

20 **12-28.5-110. Judicial review.** THE COURT OF APPEALS HAS  
21 INITIAL JURISDICTION TO REVIEW ALL FINAL ACTIONS AND ORDERS THAT  
22 ARE SUBJECT TO JUDICIAL REVIEW. JUDICIAL REVIEW PROCEEDINGS SHALL  
23 BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-106 (11).

24 **12-28.5-111. Repeal of article - review of functions.** THIS  
25 ARTICLE 28.5 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023. BEFORE ITS  
26 REPEAL, THIS ARTICLE 28.5 IS SCHEDULED FOR REVIEW IN ACCORDANCE  
27 WITH SECTION 24-34-104.

1           **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**  
2 (24)(a) introductory portion; and **add** (24)(a)(IV) as follows:

3           **24-34-104. General assembly review of regulatory agencies**  
4 **and functions for repeal, continuation, or reestablishment - legislative**  
5 **declaration - repeal.** (24) (a) The following agencies, functions, or both,  
6 ~~with~~ ARE SCHEDULED FOR repeal on September 1, 2023:

7           (IV) THE REGULATION OF HOME INSPECTORS IN ACCORDANCE WITH  
8 ARTICLE 28.5 OF TITLE 12.

9           **SECTION 3. Act subject to petition - effective date -**  
10 **applicability.** (1) This act takes effect January 1, 2018; except that, if a  
11 referendum petition is filed pursuant to section 1 (3) of article V of the  
12 state constitution against this act or an item, section, or part of this act  
13 within the ninety-day period after final adjournment of the general  
14 assembly, then the act, item, section, or part will not take effect unless  
15 approved by the people at the general election to be held in November  
16 2018 and, in such case, will take effect on the date of the official  
17 declaration of the vote thereon by the governor.

18           (2) This act applies to conduct occurring on or after the applicable  
19 effective date of this act.