

JAN 24 2024

A BILL FOR AN ACT

RELATING TO EVICTION MEDIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that many Hawaii
3 residents continue to face challenges paying their rent. This
4 is a problem for both housing providers and tenants because
5 tenants risk losing their homes due to nonpayment, and housing
6 providers risk losing their property or not keeping up with
7 their bills because of the nonpayment.

8 Act 57, Session Laws of Hawaii 2021 (Act 57), encouraged
9 communication and facilitated mediation between housing
10 providers and tenants to help encourage collaborative solutions
11 to this common problem and to avoid evictions when possible.
12 Experience shows that the mediation procedures created by Act 57
13 were widely successful in substantially increasing the number of
14 disputes that were settled in mediation without any evictions
15 cases being filed, as well as increased the number of
16 settlements in which the parties agreed that the tenant could
17 continue to reside in the dwelling unit. However, the



1 amendments made to the landlord-tenant code by Act 57 have
2 expired.

3 Accordingly, the purpose of this Act is to:

4 (1) Encourage tenants and landlords to engage in
5 conversations early, as soon as a tenant knows they
6 are not able to make their full rental payment;

7 (2) Establish a pilot program that adopts the most
8 effective provisions of Act 57 that:

9 (A) Extends the period for a notice of termination of
10 the rental agreement from five business days to
11 ten calendar days;

12 (B) Requires all housing providers and tenants to
13 engage in early mediation and delay filing an
14 action for eviction if a tenant schedules or
15 attempts to schedule a mediation;

16 (C) Requires tenants and landlords to be responsible
17 for their own attorney's fees and costs in
18 prelitigation mediation. If the tenant defaults
19 on a mediated agreement, the landlord may file
20 for eviction and payment of all attorney's fees



- 1 and costs incurred in the pre-litigation
2 mediation process; and
- 3 (D) Requires landlords to provide specific
4 information in the ten-calendar-day notice to
5 tenants, which shall also be provided to a
6 mediation center that offers free mediation for
7 residential landlord-tenant disputes; and
- 8 (3) Appropriate funds for the pre-litigation mediation
9 pilot program.

10 SECTION 2. Section 521-68, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§521-68 Landlord's remedies for failure by tenant to pay**
13 **rent~~[-]~~; pre-litigation mediation.** (a) A landlord or the
14 landlord's agent [~~may~~], any time after rent is due, may demand
15 payment thereof and notify the tenant in writing that unless
16 payment is made within a time mentioned in the notice~~[-, not]~~ as
17 provided in subsection (b), no less than [~~five business~~] ten
18 calendar days after receipt thereof, the rental agreement will
19 be terminated. [~~If the tenant cannot be served with notice as~~
20 ~~required, notice]~~ Notice may be given to the tenant by posting
21 the same in a conspicuous place on the dwelling unit~~[-]~~, and the



1 notice shall be deemed received on the date of the posting. If
2 the notice is mailed to the tenant via the United States Postal
3 Service, properly addressed and with appropriate postage, the
4 notice shall be deemed to have been received two business days
5 after the date of the postmark, unless the letter is returned to
6 the landlord as undeliverable. If the tenant remains in
7 default[-] after the expiration of the time stated in the
8 notice, the landlord may thereafter bring a summary proceeding
9 for possession of the dwelling unit or any other proper
10 proceeding, action, or suit for possession[-], subject to
11 subsections (b) through (j). The notice required by this
12 section need not be given if the action is based on the breach
13 of a mediated agreement or other settlement agreement, or is for
14 an eviction proceeding based on matters other than non-payment
15 of rent. In any action based on the breach of a mediated
16 agreement, the court shall not require any further mediation
17 prior to trial.

18 (b) The ten-calendar-day notice shall provide the
19 following:

20 (1) The name of the landlord or the landlord's agent and
21 the landlord's or landlord's agent's contact



- 1 information, including, if possible, phone number,
2 electronic mail address, and mailing address;
- 3 (2) The address of the dwelling unit subject to the rental
4 agreement;
- 5 (3) The name and contact information of all tenants listed
6 on the rental agreement, including phone number and,
7 if possible, electronic mail address and mailing
8 address;
- 9 (4) The current amount of the rent due as of the date of
10 the notice, after applying all rent paid from all
11 sources;
- 12 (5) Notice that a copy of the ten-calendar-day notice
13 being provided to the tenant is also being provided to
14 a state-funded mediation center in order for the
15 mediation center to contact the landlord and tenant to
16 attempt to schedule a mediation regarding the
17 nonpayment of rent in accordance with subsection (c);
- 18 (6) Notice that the landlord or landlord's agent may file
19 an action for summary possession if the rent due is
20 not paid and if mediation is not scheduled within ten
21 calendar days after the tenant's receipt of the



1 ten-calendar-day notice, regardless of whether the
2 scheduled mediation session occurs within the ten
3 calendar days;

- 4 (7) A warning in bold typeface print in substantially the
5 following form: "If mediation is not scheduled within
6 ten calendar days after receipt of this notice,
7 regardless of whether the scheduled mediation session
8 occurs within the ten-calendar-day period, then the
9 landlord may file an action for summary possession
10 after the expiration of the ten-calendar-day period.
11 If mediation is scheduled before the expiration of the
12 ten-calendar-day period, regardless of whether the
13 scheduled mediation session occurs within the ten
14 calendar days, then the landlord shall only file an
15 action for summary possession after the expiration of
16 twenty calendar days following the tenant's receipt of
17 the ten-calendar-day notice unless you (tenant) fail
18 to attend or cancel mediation. If the
19 ten-calendar-day notice was posted on the premises,
20 receipt of notice shall be deemed to be the date of
21 posting. If the ten-calendar-day notice was mailed,



1 receipt of notice shall be deemed to be two business
2 days after the date of the postmark. If filing an
3 action for summary possession, the landlord shall be
4 required to note, in the summary possession complaint,
5 the status of the mediation or settlement effort and
6 proof of posting or sending the ten-calendar-day
7 notice to the mediation center."; and

8 (8) Notice that the landlord or landlord's agent shall
9 engage in mediation if mediation is scheduled.

10 The judiciary shall prepare a notice form that may be used
11 by landlords and landlords' agents to provide the information
12 required by this subsection and make the form available on its
13 website.

14 (c) A landlord or the landlord's agent shall provide the
15 ten-calendar-day notice to a state-funded mediation center that
16 offers free mediation for residential landlord-tenant matters.
17 All state-funded mediation centers shall offer mediation
18 services to landlords and tenants through in-person and remote
19 means, and shall allow mediation participants to utilize remote
20 appearances, if requested. If a mediation center schedules
21 mediation within the ten-calendar-day period and the tenant



1 participates in the mediation, regardless of whether the
2 scheduled mediation session occurs within the ten-calendar-day
3 period, the landlord shall only file a summary possession
4 proceeding after the expiration of twenty calendar days from the
5 date of the tenant's receipt of the ten-calendar-day notice. If
6 the tenant schedules mediation, the landlord shall participate.
7 Upon request by the landlord or the landlord's agent, the
8 mediation center shall provide copies of a document or documents
9 verifying that the landlord provided a copy of the required
10 ten-calendar-day notice to the mediation center.

11 (d) The summary possession complaint for nonpayment of
12 rent shall include:

13 (1) A document or documents from the mediation center
14 verifying that the landlord provided a copy of the
15 required ten-calendar-day notice to the mediation
16 center or an affirmation from the landlord or the
17 landlord's agent that the notice was provided to the
18 applicable mediation center and the means by which the
19 notice was provided to the applicable mediation
20 center. Upon request by the landlord or the



1 landlord's agent, the mediation center shall provide
2 copies of the relevant documents to the landlord; and

3 (2) If mediation is scheduled but has not yet occurred,
4 the date on which the mediation is scheduled.

5 (e) If there is any defect in the ten-calendar-day notice
6 described in subsection (b) provided by the landlord and the
7 court determines the defect was unintentional or immaterial, the
8 court may allow the landlord to cure the defect without
9 dismissing the action for summary possession.

10 (f) Nothing in this section shall impact a landlord's or
11 tenant's other rights and responsibilities under this chapter.

12 (g) The mediation may take place using remote
13 communication, in person, or both.

14 (h) Each tenant and landlord shall be responsible for
15 bearing the party's own costs, including attorney's fees,
16 relating to the mediation; provided that, if the tenant defaults
17 on a mediated agreement or fails to attend a scheduled
18 mediation, the landlord may request payment of all costs,
19 including reasonable attorney's fees, incurred during the pre-
20 litigation mediation process.



1 (i) If the mediation does not result in an agreement, the
2 landlord or the landlord's agent may file an action for summary
3 possession without participating in an additional mediation;
4 provided that after the filing of the action for summary
5 possession, the court, in its discretion and based on a finding
6 of good cause, may order an additional mediation.

7 [~~(b)~~] (j) A landlord or the landlord's agent may bring an
8 action for rent alone at any time after the landlord has
9 demanded payment of past due rent and notified the tenant of the
10 landlord's intention to bring such an action."

11 SECTION 3. In accordance with section 9 of article VII, of
12 the Constitution of the State of Hawaii and sections 37-91 and
13 37-93, Hawaii Revised Statutes, the legislature has determined
14 that the appropriation contained in this Act will cause the
15 state general fund expenditure ceiling for fiscal year 2024-2025
16 to be exceeded by \$, or per cent. The reasons
17 for exceeding the general fund expenditure ceiling are that the
18 appropriation made in this Act is necessary to serve the public
19 interest and to meet the needs provided for by this Act.

20 SECTION 4. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2024-2025 for the
2 judiciary to contract for mediation services pursuant to
3 section 2 of this Act.

4 The sum appropriated shall be expended by the judiciary for
5 the purposes of this part.

6 PART II

7 SECTION 5. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

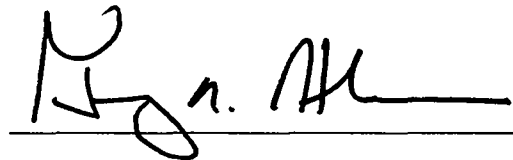
10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on July 1, 2024;
13 provided that:

14 (1) Section 2 shall take effect on November 1, 2024; and

15 (2) This Act shall be repealed on November 1, 2026, and
16 section 521-68, Hawaii Revised Statutes, shall be
17 reenacted in the form in which it read on the day
18 prior to the effective date of section 2 of this Act.

19
20 INTRODUCED BY:





S.B. NO. 3332

Report Title:

Judiciary; Eviction Mediation; Pre-litigation Mediation Pilot Program; Summary Possession; Landlords; Tenants; Hawaii Public Housing Authority; Emergency Rent Relief Program; Appropriation; General Fund Expenditure Ceiling Exceeded

Description:

Beginning 11/1/2024, extends the period for a notice of termination of a rental agreement; requires landlords to engage in mediation and delay filing an action for summary possession if a tenant schedules or attempts to schedule mediation; and requires landlords to provide specific information in the 10-calendar-day notice to tenants. Repeals 11/1/2026. Appropriates moneys. Declares that the appropriation exceeds the state general fund expenditure ceiling for 2024-2025.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

