

ACT 278

S.B. NO. 825

A Bill for an Act Relating to Eviction Mediation.

Be It Enacted by the Legislature of the State of Hawaii:

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

Act 57, Session Laws of Hawaii 2021 (Act 57), encouraged communication and facilitated mediation between housing providers and tenants to help encourage collaborative solutions to this common problem and to avoid evictions when possible. Experience shows that the mediation procedures created by Act 57 were widely successful in substantially increasing the number of disputes that were settled in mediation without any eviction cases being filed and increased the number of settlements in which the parties agreed that the tenant could continue to reside in the dwelling unit. However, the amendments to the Residential Landlord-Tenant Code by Act 57 have expired.

Accordingly, the purpose of this Act is to encourage landlords and tenants to engage in conversations early, as soon as tenants know they are not able to make their full rent payment, by:

- (1) Establishing a two-year pilot program that adopts the most effective provisions of Act 57 that:
 - (A) Extends the period for a notice of termination of the rental agreement from five business days to ten calendar days;
 - (B) Requires all landlords, or landlords' agents, and tenants to engage in early mediation and delay filing an action for summary possession if a tenant schedules mediation;
 - (C) Requires landlords, or landlords' agents, and tenants to be responsible for their own attorneys' fees and costs in prelitigation mediation, and allows the landlord or landlord's agent to file an action for summary possession and payment of all attorneys'

- fees and costs incurred in the prelitigation mediation process if the tenant defaults on a mediated agreement; and
- (D) Requires landlords and landlords' agents to provide specific information in the ten-calendar-day notice to tenants, which shall also be provided to a mediation center that offers free mediation for residential landlord-tenant disputes; and
 - (2) Appropriating funds to the judiciary for the prelitigation mediation pilot program.

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

“§521-68 Landlord’s remedies for failure by tenant to pay rent[-]; prelitigation mediation. (a) A landlord or the landlord’s agent [~~may~~], any time after rent is due, may demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in the notice, not less than [five business] ten calendar days after receipt thereof, the rental agreement will be terminated. [If the tenant cannot be served with notice as required, notice] Notice may be given to the tenant by posting the same in a conspicuous place on the dwelling unit[-], and the notice shall be deemed received on the date of the posting. If the notice is mailed to the tenant by United States Postal Service, properly addressed and with appropriate postage, the notice shall be deemed to have been received two business days after the date of the postmark, unless the letter is returned to the landlord or landlord’s agent as undeliverable. If the tenant remains in default[-] after the expiration of the time stated in the notice, the landlord may [thereafter] bring a summary proceeding for possession of the dwelling unit or any other proper proceeding, action, or suit for possession[-], subject to this section. The notice required by this section need not be given if the action is based on the breach of a mediated agreement or other settlement agreement, or is for a summary proceeding for possession based on matters other than nonpayment of rent. In any action based on the breach of a mediated agreement, the court shall not require any further mediation before trial.

(b) The ten-calendar-day notice required under subsection (a) shall include the following:

- (1) The name of the landlord or landlord’s agent and the landlord’s or landlord’s agent’s contact information, including, if possible, phone number, electronic mail address, and mailing address;
- (2) The address of the dwelling unit subject to the rental agreement;
- (3) The name and contact information of all tenants listed on the rental agreement, including phone number and, if possible, electronic mail address and mailing address;
- (4) The current amount of the rent due as of the date of the notice, after applying all rent paid from all sources;
- (5) Notice that a copy of the ten-calendar-day notice being provided to the tenant is also being provided to a state-funded mediation center for the mediation center to contact the landlord, or landlord’s agent, and tenant to schedule a mediation regarding the nonpayment of rent in accordance with subsection (c);
- (6) Notice that the landlord or landlord’s agent may file an action for summary possession if the rent due is not paid and if mediation is not scheduled within ten calendar days after the tenant’s receipt of the ten-calendar-day notice, regardless of whether the scheduled mediation session occurs within the ten calendar days;

- (7) A warning in bold typeface print in substantially the following form: “If mediation is not scheduled within ten calendar days after receipt of this notice, regardless of whether the scheduled mediation session occurs within the ten-calendar-day period, the landlord or landlord’s agent may file an action for summary possession after the expiration of the ten-calendar-day period. If mediation is scheduled before the expiration of the ten-calendar-day period, regardless of whether the scheduled mediation session occurs within the ten calendar days, the landlord or landlord’s agent shall only file an action for summary possession after the expiration of twenty calendar days following the tenant’s receipt of the ten-calendar-day notice unless you (tenant) fail to attend or cancel mediation. If the ten-calendar-day notice was posted on the premises, receipt of notice shall be deemed to be the date of posting. If the ten-calendar-day notice was mailed, receipt of notice shall be deemed to be two business days after the date of the postmark. If filing an action for summary possession, the landlord or landlord’s agent shall be required to note, in the summary possession complaint, the status of the mediation or settlement effort and proof of posting or sending the ten-calendar-day notice to the mediation center.”; and
- (8) Notice that the landlord or landlord’s agent shall engage in mediation if mediation is scheduled.

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

(c) A landlord or the landlord’s agent shall provide the ten-calendar-day notice to a state-funded mediation center that offers free mediation for residential landlord-tenant matters. All state-funded mediation centers shall offer mediation services to landlords, or landlords’ agents, and tenants through in-person and remote means, and shall allow mediation participants to utilize remote appearances, if requested. If a mediation center schedules mediation within the ten-calendar-day period and the tenant participates in the mediation, regardless of whether the scheduled mediation session occurs within the ten-calendar-day period, the landlord or landlord’s agent shall only file a summary possession proceeding after the expiration of twenty calendar days from the date of the tenant’s receipt of the ten-calendar-day notice, unless the tenant fails to appear at mediation or cancels the mediation. If the tenant schedules mediation, the landlord or landlord’s agent shall participate. Mediation shall take place within thirty days from the date that the mediation center makes contact with both the landlord, or the landlord’s agent, and tenant. Upon request by the landlord or landlord’s agent, the mediation center shall provide copies of a document or documents verifying that the landlord or landlord’s agent provided a copy of the required ten-calendar-day notice to the mediation center.

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

- (1) A document or documents from the state-funded mediation center verifying that the landlord or landlord’s agent provided a copy of the required ten-calendar-day notice to the mediation center or an affirmation from the landlord or landlord’s agent that the notice was provided to the applicable mediation center and the means by which the notice was provided to the applicable mediation center. Upon request by the landlord or landlord’s agent, the mediation center

shall provide copies of the relevant documents to the landlord or landlord's agent; and

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

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

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

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

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

(i) If the mediation does not result in an agreement, the landlord or the landlord's agent may file an action for summary possession without participating in an additional mediation; provided that:

(1) The landlord or landlord's agent shall only file a summary possession proceeding after the expiration of twenty calendar days from the date of the tenant's receipt of the ten-calendar-day notice; and

(2) After the filing of the action for summary possession, the court, in its discretion and based on a finding of good cause, may order an additional mediation.

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

SECTION 3. No later than ninety days after the termination of the pilot program established by this Act, the judiciary shall submit to the legislature a report of its findings and recommendations, including recommendations on whether the pilot program should be made permanent, and any proposed legislation.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,250,000 or so much thereof as may be necessary for fiscal year 2025-2026 and the same sum or so much thereof as may be necessary for fiscal year 2026-2027 for the judiciary to contract for mediation services pursuant to section 2 of this Act.

The sums appropriated shall be expended by the judiciary for the purposes of this Act.

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

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

SECTION 7. This Act shall take effect on July 1, 2025; provided that:

- (1) Section 2 shall take effect on February 5, 2026; and
- (2) This Act shall be repealed on February 4, 2028, and section 521-68, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of section 2 of this Act; provided further that the amendments made to section 521-68(a), Hawaii Revised Statutes, by section 2 of this Act shall not be repealed when that section is reenacted on February 4, 2028.

(Approved July 2, 2025.)