

CHAPTER 414

COURTS

HOUSE BILL 23-1120

BY REPRESENTATIVE(S) Joseph and Ortiz, Garcia, Lieder, Velasco, Amabile, Bacon, Boesenecker, Brown, deGruy Kennedy, Dickson, English, Epps, Gonzales-Gutierrez, Herod, Jodeh, Lindsay, Mabrey, Parenti, Ricks, Sirota, Story, Titone, Vigil, Weissman, Willford, Duran, Froelich, Kipp, Martinez, McCormick, Sharbini, Snyder, McCluskie; also SENATOR(S) Fields and Winter F., Cutter, Moreno, Priola, Sullivan.

AN ACT

CONCERNING EVICTION PROTECTIONS FOR RESIDENTIAL TENANTS WHO RECEIVE PUBLIC ASSISTANCE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) There is a wide disparity in access to legal representation between landlords and people experiencing eviction in Colorado. A 2021 study found that renters are represented by legal counsel in only one percent of eviction cases, while landlords are represented in 77 percent of cases.

(b) This disparity in access to legal representation creates an imbalance in power during eviction proceedings;

(c) Prelitigation mediation helps to restore the balance of power during eviction proceedings by facilitating communication between renters and landlords in a neutral setting. Skilled, neutral mediators can help guide the parties to find a reasonable and long-lasting alternative to eviction.

(d) Colorado is experiencing a housing shortage. A 2022 report from the general assembly's affordable housing and transformational task force found that the state needs an additional 325,000 rental units to meet current demand.

(e) People with disabilities face an additional barrier to finding housing that meets their accessibility requirements;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(f) People who receive cash assistance face an additional barrier to finding housing that is affordable on a fixed income; and

(g) Extending the period of time before law enforcement can execute a writ of restitution gives a renter with disabilities or a renter who receives cash assistance more time to find new housing and improves the renter's likelihood of remaining housed.

(2) The general assembly further finds that:

(a) Evictions threaten existing affordable housing by creating additional burdens for independent property owners, including legal fees, unpaid rent and utility fees, additional vacancies, and resident turnover; and

(b) Reducing evictions and preventing people from becoming homeless saves taxpayers money by reducing public spending on court costs, emergency shelter, medical care, foster care, and juvenile delinquency.

(3) Therefore, the general assembly declares it is necessary to avoid eviction proceedings and provide additional protections for people with disabilities and people who receive cash assistance who are experiencing an eviction.

SECTION 2. In Colorado Revised Statutes, 13-40-110, **amend** (1); and **add** (4) as follows:

13-40-110. Action - how commenced - report. (1) (a) An action under this ~~article~~ ARTICLE 40 is commenced by filing with the court a complaint in writing describing the property with reasonable certainty, the grounds for the recovery thereof, the name of the person in possession or occupancy, ~~and~~ a prayer for recovery of possession, AND A SIGNED AFFIDAVIT THAT STATES:

(I) THE RESIDENTIAL TENANT RECEIVES SUPPLEMENTAL SECURITY INCOME, SOCIAL SECURITY DISABILITY INSURANCE UNDER TITLE II OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 401 ET SEQ., AS AMENDED, OR CASH ASSISTANCE THROUGH THE COLORADO WORKS PROGRAM CREATED IN PART 7 OF ARTICLE 2 OF TITLE 26, AND THE COMPLAINANT AND RESIDENTIAL TENANT PARTICIPATED IN MANDATORY MEDIATION AND THE MEDIATION WAS UNSUCCESSFUL;

(II) THE COMPLAINANT AND RESIDENTIAL TENANT DID NOT PARTICIPATE IN MANDATORY MEDIATION BECAUSE THE RESIDENTIAL TENANT:

(A) DID NOT DISCLOSE OR DECLINED TO DISCLOSE IN WRITING IN RESPONSE TO A WRITTEN INQUIRY FROM THE COMPLAINANT THAT THE RESIDENTIAL TENANT RECEIVES SUPPLEMENTAL SECURITY INCOME, SOCIAL SECURITY DISABILITY INSURANCE UNDER TITLE II OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 401 ET SEQ., AS AMENDED, OR CASH ASSISTANCE THROUGH THE COLORADO WORKS PROGRAM CREATED IN PART 7 OF ARTICLE 2 OF TITLE 26; OR

(B) DOES NOT RECEIVE SUPPLEMENTAL SECURITY INCOME, SOCIAL SECURITY DISABILITY INSURANCE UNDER TITLE II OF THE FEDERAL "SOCIAL SECURITY ACT",

42 U.S.C. SEC. 401 ET SEQ., AS AMENDED, OR CASH ASSISTANCE THROUGH THE COLORADO WORKS PROGRAM CREATED IN PART 7 OF ARTICLE 2 OF TITLE 26; OR

(III) THE COMPLAINANT AND RESIDENTIAL TENANT DID NOT PARTICIPATE IN MANDATORY MEDIATION BECAUSE THE COMPLAINANT IS:

(A) A 501(c)(3) NONPROFIT ORGANIZATION THAT OFFERS OPPORTUNITIES FOR MEDIATION TO RESIDENTIAL TENANTS PRIOR TO FILING A RESIDENTIAL EVICTION IN COURT; OR

(B) A LANDLORD WITH FIVE OR FEWER SINGLE-FAMILY RENTAL HOMES AND NO MORE THAN FIVE TOTAL RENTAL UNITS, INCLUDING ANY SINGLE-FAMILY HOMES.

(b) MANDATORY MEDIATION MUST BE CONDUCTED BY A TRAINED NEUTRAL THIRD PARTY AND BE PROVIDED AT NO COST TO THE RESIDENTIAL TENANT. THE LANDLORD IS ONLY REQUIRED TO PAY FOR THE LANDLORD'S PORTION OF THE MANDATORY MEDIATION. THE COMPLAINANT AND RESIDENTIAL TENANT MAY HAVE LEGAL REPRESENTATION PRESENT DURING THE MANDATORY MEDIATION. A RESIDENTIAL TENANT MAY VOLUNTARILY WAIVE THE TENANT'S RIGHT TO MANDATORY MEDIATION, BUT A WAIVER MUST NOT BE IN ANY LEASE AGREEMENT OR OTHER AGREEMENT BETWEEN THE COMPLAINANT AND RESIDENTIAL TENANT PURSUANT TO SECTION 38-12-801.

(c) THE OFFICE OF DISPUTE RESOLUTION, CREATED IN SECTION 13-22-303, SHALL SCHEDULE THE MANDATORY MEDIATION AT THE FIRST AVAILABLE DATE, BUT NO LATER THAN FOURTEEN CALENDAR DAYS AFTER THE LANDLORD REQUESTS THE MEDIATION.

(d) FAILURE TO COMPLY WITH THE MANDATORY MEDIATION REQUIREMENTS OUTLINED IN THIS SUBSECTION (1) IS AN AFFIRMATIVE DEFENSE. IF THE AFFIRMATIVE DEFENSE IS RAISED AND THE COMPLAINANT CANNOT DEMONSTRATE THAT THE REQUIREMENTS WERE MET, THE COURT SHALL DISMISS THE CASE WITHOUT PREJUDICE AND A NEW COMPLAINT MUST BE FILED.

(e) The complaint may also set forth the amount of rent due, the rate at which it is accruing, the amount of damages due, and the rate at which they are accruing and may include a prayer for rent due or to become due, present and future damages, costs, and any other relief to which plaintiff is entitled.

(4) BEGINNING JANUARY 2024, THE JUDICIAL DEPARTMENT SHALL REPORT TO THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE AND THE SENATE JUDICIARY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, DURING THE JUDICIAL DEPARTMENT'S "SMART ACT" HEARING THE TOTAL NUMBER OF MEDIATIONS SCHEDULED BY THE OFFICE OF DISPUTE RESOLUTION PURSUANT TO THIS SECTION, THE OUTCOMES OF THE MEDIATIONS, AND THE COST OF THE MEDIATIONS FOR THE PREVIOUS FISCAL YEAR.

SECTION 3. In Colorado Revised Statutes, 13-40-122, **amend** (1) as follows:

13-40-122. Writ of restitution after judgment. (1) (a) A court shall not issue a writ of restitution upon any judgment entered in any action pursuant to this article

40 until forty-eight hours after the time of the entry of the judgment. If the writ of restitution concerns a residential tenant who receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado Works program created in part 7 of article 2 of title 26, the writ must specify that the writ is not executable for thirty days after entry of judgment pursuant to subsection (1)(b) of this section; except in the case:

(I) In which a court has ordered a judgment for possession for a substantial violation pursuant to section 13-40-107.5; or

(II) Of a landlord with five or fewer single-family rental homes and no more than five total rental units including any single-family homes.

(b) A writ of restitution ~~shall~~ must be executed by the officer having the same only in the daytime and between sunrise and sunset, and the officer shall not execute a writ of restitution concerning a residential tenancy until at least ten days after entry of the judgment; except that the officer shall not execute a writ of restitution concerning a residential tenancy until at least thirty days after entry of judgment if the residential tenant receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado Works program created in part 7 of article 2 of title 26, as specified in the writ; except in the case:

(I) In which a court has ordered a judgment for possession for a substantial violation pursuant to section 13-40-107.5; or

(II) Of a landlord with five or fewer single-family rental homes and no more than five total rental units including any single-family homes.

(c) Any writ of restitution governed by this section may be executed by the county sheriff's office in which the property is located by a sheriff, undersheriff, or deputy sheriff, as described in section 16-2.5-103 (1) or (2), while off duty or on duty at rates charged by the employing sheriff's office in accordance with section 30-1-104 (1)(gg).

SECTION 4. In Colorado Revised Statutes, **amend** 13-40-106 as follows:

13-40-106. Written demand. (1) The demand required by section 13-40-104 shall be made in writing, specifying the grounds of the demandant's right to the possession of such premises, describing the same, and the time when the same shall be delivered up, and shall be signed by the person claiming such possession, his agent, or his attorney.

(2) The demand must also include a statement that a residential tenant who receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado Works program created in part 7 of article 2 of title 26 has a

RIGHT TO MEDIATION PRIOR TO THE LANDLORD FILING AN EVICTION COMPLAINT WITH THE COURT PURSUANT TO SECTION 13-40-110.

SECTION 5. In Colorado Revised Statutes, 24-34-502, **add** (1.8) as follows:

24-34-502. Unfair housing practices prohibited - definitions. (1.8) IT IS NOT A VIOLATION OF THIS SECTION FOR A LANDLORD TO ASK A RESIDENTIAL TENANT WHETHER THE TENANT RECEIVES SUPPLEMENTAL SECURITY INCOME, SOCIAL SECURITY DISABILITY INSURANCE UNDER TITLE II OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 401 ET SEQ., AS AMENDED, OR CASH ASSISTANCE THROUGH THE COLORADO WORKS PROGRAM CREATED IN PART 7 OF ARTICLE 2 OF TITLE 26 FOR THE PURPOSES OF COMPLYING WITH SECTION 13-40-110 (1).

SECTION 6. In Colorado Revised Statutes, 38-12-801, **amend** (3); and **add** (2.5) as follows:

38-12-801. Written rental agreement - prohibited clauses - copy - tenant. (2.5) (a) A WRITTEN RENTAL AGREEMENT MUST INCLUDE A STATEMENT THAT SECTION 24-34-502 (1) PROHIBITS SOURCE OF INCOME DISCRIMINATION AND REQUIRES A NON-EXEMPT LANDLORD TO ACCEPT ANY LAWFUL AND VERIFIABLE SOURCE OF MONEY PAID DIRECTLY, INDIRECTLY, OR ON BEHALF OF A PERSON, INCLUDING INCOME DERIVED FROM ANY LAWFUL PROFESSION OR OCCUPATION AND INCOME OR RENTAL PAYMENTS DERIVED FROM ANY GOVERNMENT OR PRIVATE ASSISTANCE, GRANT, OR LOAN PROGRAM.

(b) THIS SUBSECTION (2.5) DOES NOT APPLY TO A LANDLORD WITH FIVE OR FEWER SINGLE-FAMILY RENTAL HOMES AND NO MORE THAN FIVE TOTAL RENTAL UNITS INCLUDING ANY SINGLE-FAMILY HOMES.

(3) (a) A written rental agreement must not include:

~~(a)~~ (I) An unreasonable liquidated damages clause that assigns a cost to a party stemming from an eviction notice or an eviction action from a violation of the rental agreement; ~~or~~

~~(b)~~ (II) A one-way, fee-shifting clause that awards attorney fees and court costs only to one party. Any fee-shifting clause contained in a rental agreement must award attorney fees to the prevailing party in a court dispute concerning the rental agreement, residential premises, or dwelling unit.

(III) A WAIVER OF MANDATORY MEDIATION REQUIRED PURSUANT TO SECTION 13-40-110 (1); OR

(IV) A CLAUSE THAT ALLOWS A LANDLORD TO RECOUP ANY COSTS ASSOCIATED WITH MANDATORY MEDIATION REQUIRED PURSUANT TO SECTION 13-40-110 (1).

~~(c)~~ (b) Any clause in violation of ~~subsection (3)(a) or (3)(b) of this section~~ THIS SUBSECTION (3) is null and void and unenforceable.

SECTION 7. Appropriation. (1) For the 2023-24 state fiscal year, \$328,026 is appropriated to the judicial department for use by courts administration. This

appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$246,076 for general courts administration, which amount is based on an assumption that the department will require an additional 0.6 FTE;

(b) \$75,000 for information technology infrastructure; and

(c) \$6,950 for capital outlay.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 6, 2023