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**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

**REDRAFT
1.17.23**

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 23-0541.01 Shelby Ross x4510

HOUSE BILL

HOUSE SPONSORSHIP

Joseph, Garcia, Lieder

SENATE SPONSORSHIP

Fields and Winter F.,

BILL TOPIC: "Eviction Protections For Residential Tenants"
DEADLINES: Finalize by: JAN 12, 2023 File by: JAN 17, 2023

A BILL FOR AN ACT

101 **CONCERNING EVICTION PROTECTIONS FOR RESIDENTIAL TENANTS**
102 **WHO RECEIVE PUBLIC ASSISTANCE.**

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>.)

The bill requires a landlord and residential tenant to participate in mandatory mediation prior to commencing an eviction action if the residential tenant receives supplemental security income, federal social security disability insurance, or cash assistance through the Colorado works program (collectively, "cash assistance"). The landlord and residential tenant do not have to participate in mediation if the residential

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

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tenant did not disclose or declined to disclose in writing to the landlord that the residential tenant receives cash assistance. Failure to comply with mandatory mediation is an affirmative defense.

The bill prohibits a law enforcement officer from executing a writ of restitution against a residential tenant for at least 30 days after the entry of judgment if the residential tenant receives cash assistance.

The bill requires a written rental agreement to include a statement that a residential tenant who receives cash assistance has a right to mediation prior to the landlord filing an eviction complaint with the court.

The bill prohibits a written rental agreement from including a ~~waiver of mandatory mediation.~~

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

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

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

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

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

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

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

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

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

9 (2) The general assembly further finds that:

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

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

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

21 **SECTION 2.** In Colorado Revised Statutes, 13-40-110, **amend**

22 (1) as follows:

23 **13-40-110. Action - how commenced.** (1) (a) An action under
24 this ~~article~~ ARTICLE 40 is commenced by filing with the court a complaint
25 in writing describing the property with reasonable certainty, the grounds
26 for the recovery thereof, the name of the person in possession or
27 occupancy, ~~and~~ a prayer for recovery of possession, AND A SIGNED

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

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

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

19 (B) DOES NOT RECEIVE SUPPLEMENTAL SECURITY INCOME, SOCIAL
20 SECURITY DISABILITY INSURANCE UNDER TITLE II OF THE FEDERAL
21 "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 401 ET SEQ., AS AMENDED, OR
22 CASH ASSISTANCE THROUGH THE COLORADO WORKS PROGRAM CREATED
23 IN PART 7 OF ARTICLE 2 OF TITLE 26.

24 (b) MANDATORY MEDIATION MUST BE CONDUCTED BY A TRAINED
25 NEUTRAL THIRD PARTY. THE COMPLAINANT AND RESIDENTIAL TENANT
26 MAY HAVE LEGAL REPRESENTATION PRESENT DURING THE MANDATORY
27 MEDIATION. A RESIDENTIAL TENANT MAY VOLUNTARILY WAIVE THE

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1 TENANT'S RIGHT TO MANDATORY MEDIATION, BUT A WAIVER MUST NOT BE
2 IN ANY LEASE AGREEMENT OR OTHER AGREEMENT BETWEEN THE
3 COMPLAINANT AND RESIDENTIAL TENANT PURSUANT TO SECTION
4 38-12-801.

5 (c) FAILURE TO COMPLY WITH THE MANDATORY MEDIATION
6 REQUIREMENTS OUTLINED IN THIS SUBSECTION (1) IS AN AFFIRMATIVE
7 DEFENSE. IF THE AFFIRMATIVE DEFENSE IS RAISED AND THE COMPLAINANT
8 CANNOT DEMONSTRATE THAT THE REQUIREMENTS WERE MET, THE COURT
9 SHALL ~~DISMISS THE CASE WITHOUT PREJUDICE AND A NEW COMPLAINT~~
10 ~~MUST BE FILED CONTINUE THE CASE UNTIL THE REQUIREMENTS ARE MET.~~

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

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

18 **13-40-122. Writ of restitution after judgment.** (1) (a) A court
19 shall not issue a writ of restitution upon any judgment entered in any
20 action pursuant to this article 40 until forty-eight hours after the time of
21 the entry of the judgment. ~~IF THE WRIT OF RESTITUTION CONCERNS A~~
22 ~~RESIDENTIAL TENANT WHO RECEIVES SUPPLEMENTAL SECURITY INCOME;~~
23 ~~SOCIAL SECURITY DISABILITY INSURANCE UNDER TITLE II OF THE FEDERAL~~
24 ~~"SOCIAL SECURITY ACT", 42 U.S.C. SEC. 401 ET SEQ., AS AMENDED, OR~~
25 ~~CASH ASSISTANCE THROUGH THE COLORADO WORKS PROGRAM CREATED~~
26 ~~IN PART 7 OF ARTICLE 2 OF TITLE 26, THE WRIT MUST SPECIFY THAT THE~~
27 ~~WRIT IS NOT EXECUTABLE FOR THIRTY DAYS AFTER ENTRY OF JUDGMENT~~

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~~PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION.~~
(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.~~

(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, 38-12-801, **amend**
(3); and **add** (2.5) as follows:

38-12-801. Written rental agreement - prohibited clauses -
copy - tenant. ~~(2.5) A WRITTEN RENTAL AGREEMENT MUST INCLUDE A~~
~~STATEMENT THAT A 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~~

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~~1 MEDATION PRIOR TO THE LANDLORD FILING AN EVICTION COMPLAINT~~
2 WITH THE COURT PURSUANT TO SECTION 13-40-110.

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

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

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

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

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

16 **SECTION 5. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, or safety.