

JAN 22 2016

A BILL FOR AN ACT

RELATING TO THE CONDOMINIUM COURT PILOT PROGRAM.

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

1 SECTION 1. (a) There is established the condominium court
2 pilot program in the small claims division of the district court
3 of the first circuit of the State, to be administered by the
4 judiciary, to provide efficient and cost-effective condominium
5 dispute resolution.

6 (b) Under the condominium court pilot program:

7 (1) A condominium court shall be held at the district
8 courthouse in the district court of the first circuit,
9 or other duly designated place, by the judge or judges
10 of the condominium court; provided that the
11 condominium court shall not be deemed to be "other
12 courts" as that term is used in article VI, section 1,
13 of the state constitution;

14 (2) The chief justice of the supreme court shall designate
15 a condominium judge or judges for the district court
16 of the first circuit, as may be necessary; provided
17 that if the volume of condominium cases in which a



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1 condominium judge presides is not adequate to provide
2 a condominium court judge with a full time docket, the
3 judge may hear cases arising from other areas of law.
4 If more than one judge is designated for the
5 condominium court, the chief justice shall designate
6 one of the judges as senior judge. The chief justice
7 may temporarily assign a condominium court judge to
8 preside in another circuit when the chief justice
9 determines that the urgency of one or more cases in
10 the district court or the volume of the cases in the
11 district court so requires; and

12 (3) The condominium court shall have exclusive, original
13 jurisdiction over all proceedings, including
14 proceedings for declaratory judgment on the validity
15 of agency rules authorized under chapter 91, Hawaii
16 Revised Statutes, arising under chapters 514A and
17 514B, Hawaii Revised Statutes; provided that upon the
18 motion of a party or sua sponte by the chief justice,
19 the chief justice may assign to the condominium court
20 issues before the court when the chief justice
21 determines that due to their subject matter the



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1 assignment is required to ensure the uniform
2 application of condominium laws throughout the State
3 or to otherwise effectuate the purposes of this Act.

4 (c) In any case in which it has jurisdiction, the
5 condominium court shall exercise general equity powers as
6 authorized by law. Nothing in this chapter shall be construed
7 to limit the jurisdiction and authority of any judge, designated
8 as judge of a condominium court, to matters within the scope of
9 this chapter.

10 (d) The supreme court shall adopt rules regarding the
11 administration, operation, and procedures of the condominium
12 court.

13 (e) The judiciary shall submit a report to the legislature
14 no later than twenty days prior to the convening of the 2017 and
15 2018 regular sessions on the expenditures, caseload, and results
16 of the condominium court pilot program.

17 SECTION 2. Section 91-7, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Any interested person may obtain a judicial
20 declaration as to the validity of an agency rule as provided in
21 subsection (b) by bringing an action against the agency in the



1 circuit court or, if applicable, the environmental court^[7] or
2 condominium court, of the county in which the petitioner resides
3 or has its principal place of business. The action may be
4 maintained whether or not the petitioner has first requested the
5 agency to pass upon the validity of the rule in question."

6 SECTION 3. Section 514A-47, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§514A-47 Cease and desist orders. In addition to its
9 authority under section 514A-48, whenever the commission has
10 reason to believe that any person is violating or has violated
11 section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65,
12 514A-67, 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95,
13 514A-95.1, 514A-97, 514A-98, 514A-134, or 514B-72, or the rules
14 of the commission adopted pursuant thereto, it shall issue and
15 serve upon the person a complaint stating its charges in that
16 respect and containing a notice of a hearing at a stated place
17 and upon a day at least thirty days after the service of the
18 complaint. The person served has the right to appear at the
19 place and time specified and show cause why an order should not
20 be entered by the commission requiring the person to cease and
21 desist from the violation of the law or the rules of the



1 commission charged in the complaint. If, upon the hearing, the
2 commission is of the opinion that this chapter or the rules of
3 the commission have been or are being violated, it shall make a
4 report in writing stating its findings as to the facts and shall
5 issue and cause to be served on the person an order requiring
6 the person to cease and desist from the violations. The person,
7 within thirty days after service upon the person of the report
8 or order, may obtain a review thereof in the appropriate circuit
9 court[-] or condominium court, as applicable."

10 SECTION 4. Section 514A-121, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) At the request of any party, any dispute concerning or
13 involving one or more apartment owners and an association of
14 apartment owners, its board of directors, managing agent, or one
15 or more other apartment owners relating to the interpretation,
16 application or enforcement of chapter 514A or the association's
17 declaration, bylaws, or house rules adopted in accordance with its
18 bylaws shall be submitted to arbitration. The arbitration shall
19 be conducted, unless otherwise agreed by the parties, in
20 accordance with the rules adopted by the commission and the
21 provisions of chapter 658A; provided that the Condominium Property



1 Regime Rules on Arbitration of Disputes of the American
2 Arbitration Association shall be used until the commission adopts
3 its rules; provided further that where any arbitration rule
4 conflicts with chapter 658A, chapter 658A shall prevail; provided
5 further that notwithstanding any rule to the contrary, the
6 arbitrator shall conduct the proceedings in a manner which affords
7 substantial justice to all parties. The arbitrator shall be bound
8 by rules of substantive law and shall not be bound by rules of
9 evidence, whether or not set out by statute, except for provisions
10 relating to privileged communications. The arbitrator shall
11 permit discovery as provided for in the Hawaii rules of civil
12 procedure; provided that the arbitrator may restrict the scope of
13 such discovery for good cause to avoid excessive delay and costs
14 to the parties or the arbitrator may refer any matter involving
15 discovery to the circuit court or condominium court, as
16 applicable, for disposition in accordance with the Hawaii rules of
17 civil procedure then in effect."

18 SECTION 5. Section 514A-122, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§514A-122 Determination of unsuitability. At any time
21 within twenty days of being served with a written demand for



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1 arbitration, any party so served may apply to the circuit court in
2 the judicial circuit in which the condominium is located or
3 condominium court, as applicable, for a determination that the
4 subject matter of the dispute is unsuitable for disposition by
5 arbitration.

6 In determining whether the subject matter of a dispute is
7 unsuitable for disposition by arbitration, a court may consider:

- 8 (1) The magnitude of the potential award, or any issue of
9 broad public concern raised by the subject matter
10 underlying the dispute;
- 11 (2) Problems referred to the court where court regulated
12 discovery is necessary;
- 13 (3) The fact that the matter in dispute is a reasonable or
14 necessary issue to be resolved in pending litigation
15 and involves other matters not covered by or related
16 to chapter 514A;
- 17 (4) The fact that the matter to be arbitrated is only part
18 of a dispute involving other parties or issues which
19 are not subject to arbitration under section 514A-121;
20 or



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1 (5) Any matters of dispute where disposition by
2 arbitration, in the absence of complete judicial
3 review, would not afford substantial justice to one or
4 more of the parties.

5 Any such application to the circuit court or condominium
6 court, as applicable, shall be made and heard in a summary manner
7 and in accordance with procedures for the making and hearing of
8 motions. The prevailing party shall be awarded its attorneys'
9 fees and costs in an amount not to exceed \$200."

10 SECTION 6. Section 514A-123, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§514A-123 Determination of insurance coverage. In the
13 event of a dispute as to whether a claim shall be excluded from
14 mandatory arbitration under section 514A-121(b)(7), any party to
15 an arbitration may file a complaint for declaratory relief against
16 the involved insurer or insurers for a determination of whether
17 insurance coverage is unavailable due to the pursuit of action by
18 arbitration. The complaint shall be filed with the circuit court
19 in the judicial circuit in which the condominium is located[-] or
20 condominium court, as applicable. The insurer or insurers shall
21 file an answer to the complaint within twenty days of the date of



1 service of the complaint and the issue shall be disposed of by the
2 circuit court or condominium court, as applicable, at a hearing
3 to be held at the earliest available date; provided that the
4 hearing shall not be held within twenty days from the date of
5 service of the complaint upon the insurer or insurers."

6 SECTION 7. Section 514A-125, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§514A-125 Award; confirming award. The award of the
9 arbitrator shall be in writing and acknowledged or proved in like
10 manner as a deed for the conveyance of real estate, and shall be
11 served by the arbitrator on each of the parties to the
12 arbitration, personally or by registered or certified mail. At
13 any time within one year after the award is made and served, any
14 party to the arbitration may apply to the circuit court of the
15 judicial circuit in which the condominium is located or
16 condominium court, as applicable, for an order confirming the
17 award. The court shall grant the order confirming the award
18 pursuant to section 658A-22, unless the award is vacated,
19 modified, or corrected, as provided in sections 658A-20, 658A-23,
20 and 658A-24, or a trial de novo is demanded under section
21 514A-127, or the award is successfully appealed under section



1 514A-127. The record shall be filed with the motion to confirm
2 award and notice of the motion shall be served upon each other
3 party or their respective attorneys in the manner required for
4 service of notice of a motion."

5 SECTION 8. Section 514B-66, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§514B-66 Cease and desist orders. In addition to its
8 authority under sections 514B-67 and 514B-68, whenever the
9 commission has reason to believe that any person is violating or
10 has violated this part, part V, section 514B-103, 514B-132,
11 514B-134, 514B-149, sections 514B-152 to 514B-154, section
12 514B-154.5, or the rules of the commission adopted pursuant
13 thereto, it may issue and serve upon the person a complaint
14 stating its charges in that respect and containing a notice of a
15 hearing at a stated place and upon a day at least thirty days
16 after the service of the complaint. The person served has the
17 right to appear at the place and time specified and show cause
18 why an order should not be entered by the commission requiring
19 the person to cease and desist from the violation of the law or
20 rules charged in the complaint. If the commission finds that
21 this chapter or the rules of the commission have been or are



1 being violated, it shall make a report in writing stating its
2 findings as to the facts and shall issue and cause to be served
3 on the person an order requiring the person to cease and desist
4 from the violations. The person, within thirty days after
5 service upon the person of the report or order, may obtain a
6 review thereof in the appropriate circuit court[-] or
7 condominium court, as applicable."

8 SECTION 9. Section 514B-71, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) The commission shall establish a condominium
11 education trust fund that the commission shall use for
12 educational purposes. Educational purposes shall include
13 financing or promoting:

14 (1) Education and research in the field of condominium
15 management, condominium project registration, and real
16 estate, for the benefit of the public and those
17 required to be registered under this chapter;

18 (2) The improvement and more efficient administration of
19 associations;

20 (3) Expeditious and inexpensive procedures for resolving
21 association disputes; [~~and~~]



- 1 (4) Support for mediation of condominium related
- 2 disputes[-]; and
- 3 (5) The condominium court pilot program, established
- 4 pursuant to Act , Session Laws of Hawaii 2016."

5 SECTION 10. Section 514B-72, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Each project or association with more than five
8 units, including any project or association with more than five
9 units subject to chapter 514A, shall pay to the department of
10 commerce and consumer affairs:

11 (1) A condominium education trust fund fee within one year
12 after the recordation of the purchase of the first
13 unit or within thirty days of the association's first
14 meeting, and thereafter, on or before June 30 of every
15 odd-numbered year, as prescribed by rules adopted
16 pursuant to chapter 91; and

17 (2) Beginning with the July 1, 2015, biennium
18 registration, an additional annual condominium
19 education trust fund fee in an amount equal to the
20 product of \$1.50 times the number of condominium units
21 included in the registered project or association to



1 be dedicated to supporting mediation of condominium
2 related disputes[-] and the condominium court pilot
3 program, established pursuant to Act _____, Session Laws
4 of Hawaii 2016. The additional condominium education
5 trust fund fee shall total \$3 per unit until the
6 commission adopts rules pursuant to chapter 91. On
7 June 30 of every odd-numbered year, any unexpended
8 additional amounts paid into the condominium education
9 trust fund and initially dedicated to supporting
10 mediation of condominium related disputes[-] and the
11 condominium court pilot program, as required by this
12 paragraph, shall be used for educational purposes as
13 provided in section 514B-71(a)(1), (2), [~~and~~] (3) [-],
14 and (5)."

15 SECTION 11. Section 514B-111, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The circuit court of the judicial circuit in which a
18 condominium is located or condominium court, as applicable, may
19 excuse compliance with any of the following provisions in a
20 declaration or bylaws if it finds that the provision
21 unreasonably interferes with the association's ability to manage



1 the common property, administer the condominium property regime,
2 or carry out any other function set forth in the declaration or
3 bylaws, and that compliance is not necessary to protect the
4 legitimate interests of the members or lenders holding security
5 interests:

- 6 (1) A provision limiting the amount of any assessment that
7 can be levied against individually owned property;
- 8 (2) A provision requiring that an amendment to the
9 declaration or bylaws be approved by lenders;
- 10 (3) A provision requiring approval of at least sixty-seven
11 per cent of the common interest to adopt an amendment
12 pursuant to section 514B-32(a)(11) or section
13 514B-108(e); provided that the amendment does not:
- 14 (A) Prohibit or materially restrict the use or
15 occupancy of, or behavior within, individually
16 owned units;
- 17 (B) Change the basis for allocating voting rights or
18 assessments among unit owners; or
- 19 (C) Apply to less than all of the unit owners;
- 20 (4) A requirement that an amendment to the declaration be
21 signed by unit owners; or



1 (5) A quorum requirement for meetings of unit owners."

2 SECTION 12. Section 514B-151, Hawaii Revised Statutes, is
3 amended by amending subsection (c) to read as follows:

4 "(c) In any project where the association is a lessor or
5 sublessor, the association shall fulfill its obligations under
6 this section by appointing independent counsel to represent the
7 lessees in the negotiations and proceedings related to the rent
8 renegotiation. The lessees' counsel shall act on behalf of the
9 lessees in accordance with the vote or written consent of a
10 majority of the lessees casting ballots or submitting written
11 consents as determined by the ratio that the common interest
12 appurtenant to each lessee's unit bears to the total common
13 interest appurtenant to the units of participating lessees.
14 Nothing in this subsection shall be interpreted to preclude the
15 lessees from making a decision (by the vote or written consent
16 of a majority of the lessees as described above) to retain other
17 counsel or additional professional advisors as may be reasonably
18 necessary or appropriate to complete the negotiations and
19 proceedings. In the event of a deadlock among the lessees or
20 other inability to proceed with the rent renegotiation on behalf
21 of the lessees, the lessees' counsel may apply to the circuit



1 court of the judicial circuit in which the condominium is
2 located or condominium court, as applicable, for instructions.
3 The association shall not instruct or direct the lessees'
4 counsel or other professional advisors. All costs and expenses
5 incurred under this subsection shall be assessed by the
6 association to the lessees as provided in subsection (a) or (b),
7 as may be applicable."

8 SECTION 13. Section 514B-162, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsection (a) to read:

11 "(a) At the request of any party, any dispute concerning
12 or involving one or more unit owners and an association, its
13 board, managing agent, or one or more other unit owners relating
14 to the interpretation, application, or enforcement of this
15 chapter or the association's declaration, bylaws, or house rules
16 adopted in accordance with its bylaws shall be submitted to
17 arbitration. The arbitration shall be conducted, unless
18 otherwise agreed by the parties, in accordance with the rules
19 adopted by the commission and of chapter 658A; provided that the
20 rules of the arbitration service conducting the arbitration
21 shall be used until the commission adopts its rules; provided



1 further that where any arbitration rule conflicts with chapter
2 658A, chapter 658A shall prevail; and provided further that
3 notwithstanding any rule to the contrary, the arbitrator shall
4 conduct the proceedings in a manner which affords substantial
5 justice to all parties. The arbitrator shall be bound by rules
6 of substantive law and shall not be bound by rules of evidence,
7 whether or not set out by statute, except for provisions
8 relating to privileged communications. The arbitrator shall
9 permit discovery as provided for in the Hawaii rules of civil
10 procedure; provided that the arbitrator may restrict the scope
11 of such discovery for good cause to avoid excessive delay and
12 costs to the parties or the arbitrator may refer any matter
13 involving discovery to the circuit court or condominium court,
14 as applicable, for disposition in accordance with the Hawaii
15 rules of civil procedure then in effect."

16 2. By amending subsections (c) and (d) to read:

17 "(c) At any time within twenty days of being served with a
18 written demand for arbitration, any party so served may apply to
19 the circuit court in the judicial circuit in which the
20 condominium is located or condominium court, as applicable, for



1 a determination that the subject matter of the dispute is
2 unsuitable for disposition by arbitration.

3 In determining whether the subject matter of a dispute is
4 unsuitable for disposition by arbitration, a court may consider:

5 (1) The magnitude of the potential award, or any issue of
6 broad public concern raised by the subject matter
7 underlying the dispute;

8 (2) Problems referred to the court where court regulated
9 discovery is necessary;

10 (3) The fact that the matter in dispute is a reasonable or
11 necessary issue to be resolved in pending litigation
12 and involves other matters not covered by or related
13 to this chapter;

14 (4) The fact that the matter to be arbitrated is only part
15 of a dispute involving other parties or issues which
16 are not subject to arbitration under this section; and

17 (5) Any matters of dispute where disposition by
18 arbitration, in the absence of complete judicial
19 review, would not afford substantial justice to one or
20 more of the parties.



1 Any such application to the circuit court or condominium
2 court, as applicable, shall be made and heard in a summary
3 manner and in accordance with procedures for the making and
4 hearing of motions. The prevailing party shall be awarded its
5 attorneys' fees and costs in an amount not to exceed \$200.

6 (d) In the event of a dispute as to whether a claim shall
7 be excluded from mandatory arbitration under subsection (b)(7),
8 any party to an arbitration may file a complaint for declaratory
9 relief against the involved insurer or insurers for a
10 determination of whether insurance coverage is unavailable due
11 to the pursuit of action by arbitration. The complaint shall be
12 filed with the circuit court in the judicial circuit in which
13 the condominium is located[-] or condominium court, as
14 applicable. The insurer or insurers shall file an answer to the
15 complaint within twenty days of the date of service of the
16 complaint and the issue shall be disposed of by the circuit
17 court or condominium court, as applicable, at a hearing to be
18 held at the earliest available date; provided that the hearing
19 shall not be held within twenty days from the date of service of
20 the complaint upon the insurer or insurers."

21 3. By amending subsection (f) to read:



1 "(f) The award of the arbitrator shall be in writing and
2 acknowledged or proved in like manner as a deed for the
3 conveyance of real estate, and shall be served by the arbitrator
4 on each of the parties to the arbitration, personally or by
5 registered or certified mail. At any time within one year after
6 the award is made and served, any party to the arbitration may
7 apply to the circuit court of the judicial circuit in which the
8 condominium is located or condominium court, as applicable, for
9 an order confirming the award. The court shall grant the order
10 confirming the award pursuant to section 658A-22, unless the
11 award is vacated, modified, or corrected, as provided in
12 sections 658A-20, 658A-23, and 658A-24, or a trial de novo is
13 demanded under subsection (h), or the award is successfully
14 appealed under subsection (h). The record shall be filed with
15 the motion to confirm award, and notice of the motion shall be
16 served upon each other party or their respective attorneys in
17 the manner required for service of notice of a motion."

18 SECTION 14. Section 514B-163, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) Written demand for a trial de novo by any party
21 desiring a trial de novo shall be made upon the other parties



1 within ten days after service of the arbitration award upon all
2 parties and the trial de novo shall be filed in circuit court or
3 condominium court, as applicable, within thirty days of the
4 written demand. Failure to meet these deadlines shall preclude
5 a party from demanding a trial de novo."

6 SECTION 15. Section 633-27, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) All district courts, except as otherwise provided,
9 shall exercise jurisdiction conferred by this chapter, and while
10 sitting in the exercise of that jurisdiction, shall be known and
11 referred to as the small claims division of the district court;
12 provided that the jurisdiction of the court when sitting as a
13 small claims division of the district court shall be confined
14 to:

- 15 (1) Cases for the recovery of money only where the amount
16 claimed does not exceed \$5,000 exclusive of interest
17 and costs, except as provided by section 633-30;
- 18 (2) Cases involving disagreement between landlord and
19 tenant about the security deposit in a residential
20 landlord-tenant relationship; [and]



- 1 (3) Cases for the return of leased or rented personal
2 property worth less than \$5,000 where the amount
3 claimed owed for that lease or rental is less than
4 \$5,000 exclusive of interest and costs[-]; and
- 5 (4) Cases in the district court of the first circuit that
6 arise under chapters 514A and 514B; provided that any
7 related proceeding shall be held in the condominium
8 court established pursuant to Act , Session Laws of
9 Hawaii 2016; provided further that the condominium
10 court shall not have jurisdiction over cases arising
11 under chapters 514A and 514B that pertain to personal
12 injury or past due maintenance fees, fines, or
13 penalties.

14 This chapter shall not abridge or affect the jurisdiction of the
15 district courts under paragraphs (1) and (3) to determine cases
16 under the ordinary procedures of the court, it being optional
17 with the plaintiff in the cases to elect the procedure of the
18 small claims division of the district court or the ordinary
19 procedures, as provided by rule of court. No case filed in the
20 small claims division after December 31, 1991, shall be removed
21 from the small claims division to be heard under the ordinary



1 procedures of the district court unless the removal is agreed to
2 by the plaintiff. In cases arising under paragraph (2), the
3 jurisdiction of the small claims division of the district court
4 shall be exclusive; provided that the district court, having
5 jurisdiction over a civil action involving summary possession,
6 shall have concurrent jurisdiction with the small claims
7 division of the district court over any security deposit dispute
8 between landlord and tenant in a residential landlord-tenant
9 relationship. In cases arising under paragraph (4), the
10 jurisdiction of the condominium court in the small claims
11 division of the district court of the first circuit shall be
12 exclusive. This subsection shall not abrogate or supersede
13 sections 604-5, 633-30, and 633-31."

14 SECTION 16. Matters pending in any state court as of the
15 effective date of this Act may be transferred to the condominium
16 courts as directed by the chief justice of the supreme court, in
17 the chief justice's sole discretion.

18 SECTION 17. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 18. This Act shall take effect on July 1, 2016;
21 provided that on June 30, 2018, this Act shall be repealed and



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1 sections 91-7, 514A-47, 514A-121, 514A-122, 514A-123, 514A-125,
2 514B-66, 514B-71, 514B-72, 514B-111, 514B-151, 514B-162,
3 514B-163, and 633-27, Hawaii Revised Statutes, shall be
4 reenacted in the form in which they read on the day before the
5 effective date of this Act.

6

INTRODUCED BY: *Thomas Chun Caldwell*

M.H.A.
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S.B. NO. 2212

Report Title:

Judiciary; Condominium Court Pilot Program; Small Claims
Division; Oahu; Condominium Education Trust Fund

Description:

Establishes the condominium court pilot program on the island of Oahu, provides the small claims division of the district court of the first circuit with the jurisdiction to hear proceedings arising from certain condominium laws, and requires funding from the condominium education trust fund. Repeals on June 30, 2018.

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

