

SENATE BILL No. 593

By Committee on Commerce

2-13

AN ACT concerning telecommunication services; relating to agreements with telecommunications providers and landlords; amending K.S.A. 58-2543 and 58-2553 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 58-2543 is hereby amended to read as follows: 58-2543. As used in this act: (a) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(b) "Building and housing codes" includes any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(c) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household; but such term shall not include real property used to accommodate a manufactured home or mobile home, unless such manufactured home or mobile home is rented or leased by the landlord.

(d) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(e) "Landlord" means the owner, lessor or sublessor of the dwelling unit, or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by K.S.A. 58-2551 and amendments thereto.

(f) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(g) "Owner" means one or more persons, jointly or severally, in whom is vested: (1) All or part of the legal title to property; or (2) all or part of the beneficial ownership and a right to prevent use and enjoyment of the premises; and such term includes a mortgagee in possession.

(h) "Person" includes an individual or organization.

(i) "Premises" means a dwelling unit and the structure of which it is

1 a part and facilities and appurtenances therein and grounds, areas and
2 facilities held out for the use of tenants generally or the use of which is
3 promised to the tenant.

4 (j) *“Provider” means a corporation, company, individual, association*
5 *of persons or organization that hold a certificate to provide local exchange*
6 *telecommunications service from the state corporation commission, pur-*
7 *suant to K.S.A. 66-131, and amendments thereto, and has a telecommu-*
8 *nication franchise pursuant to K.S.A. 12-2001 et seq., and amendments*
9 *thereto, or a cable franchise pursuant to K.S.A. 12-2007, and amendments*
10 *thereto.*

11 ~~(j)~~ (k) *“Rent” means all payments to be made to the landlord under*
12 *the rental agreement, other than the security deposit.*

13 ~~(k)~~ (l) *“Rental agreement” means all agreements, written or oral, and*
14 *valid rules and regulations adopted under K.S.A. 58-2556 and amend-*
15 *ments thereto, embodying the terms and conditions concerning the use*
16 *and occupancy of a dwelling unit and premise.*

17 ~~(l)~~ (m) *“Roomer” means a person occupying a dwelling unit that lacks*
18 *a major bathroom and kitchen facility, in a structure where one or more*
19 *major facilities are used in common by occupants of the dwelling unit*
20 *and other dwelling units. As used herein, a major bathroom facility means*
21 *a toilet, and either a bath or shower, and a major kitchen facility means*
22 *a refrigerator, stove and sink.*

23 ~~(m)~~ (n) *“Security deposit” means any sum of money specified in a*
24 *rental agreement, however denominated, to be deposited with a landlord*
25 *by a tenant as a condition precedent to the occupancy of a dwelling unit,*
26 *which sum of money, or any part thereof, may be forfeited by the tenant*
27 *under the terms of the rental agreement upon the occurrence or breach*
28 *of conditions specified therein.*

29 ~~(n)~~ (o) *“Single family residence” means a structure maintained and*
30 *used as a single dwelling unit. Notwithstanding that a dwelling unit shares*
31 *one or more walls with another dwelling unit, it is a single family residence*
32 *if it has direct access to a street or thoroughfare and shares neither heating*
33 *facilities, hot water equipment, nor any other essential facility or service*
34 *with any other dwelling unit.*

35 ~~(o)~~ (p) *“Tenant” means a person entitled under a rental agreement*
36 *to occupy a dwelling unit to the exclusion of others.*

37 Sec. 2. K.S.A. 58-2553 is hereby amended to read as follows: 58-
38 2553. (a) Except when prevented by an act of God, the failure of public
39 utility services or other conditions beyond the landlord’s control, the land-
40 lord shall:

41 (1) Comply with the requirements of applicable building and housing
42 codes materially affecting health and safety. If the duty imposed by this
43 paragraph is greater than any duty imposed by any other paragraph of

1 this subsection, the landlord's duty shall be determined in accordance
2 with the provisions of this paragraph;

3 (2) exercise reasonable care in the maintenance of the common areas;

4 (3) maintain in good and safe working order and condition all elec-
5 trical, plumbing, sanitary, heating, ventilating and air-conditioning appli-
6 cances including elevators, supplied or required to be supplied by such
7 landlord;

8 (4) except where provided by a governmental entity, provide and
9 maintain on the grounds, for the common use by all tenants, appropriate
10 receptacles and conveniences for the removal of ashes, garbage, rubbish
11 and other waste incidental to the occupancy of the dwelling unit and
12 arrange for their removal; and

13 (5) supply running water and reasonable amounts of hot water at all
14 times and reasonable heat, unless the building that includes the dwelling
15 units is not required by law to be equipped for that purpose, or the
16 dwelling unit is so constructed that heat or hot water is generated by an
17 installation within the exclusive control of the tenant and supplied by a
18 direct public utility connection. Nothing in this section shall be construed
19 as abrogating, limiting or otherwise affecting the obligation of a tenant to
20 pay for any utility service in accordance with the provisions of the rental
21 agreement. The landlord shall not interfere with or refuse to allow access
22 or service to a tenant by a communication or cable television service duly
23 franchised by a municipality.

24 (b) The landlord and tenants of a dwelling unit or units which provide
25 a home, residence or sleeping place for not to exceed four households
26 having common areas may agree in writing that the tenant is to perform
27 the landlord's duties specified in paragraphs (4) and (5) of subsection (a)
28 of this section and also specified repairs, maintenance tasks, alterations
29 or remodeling, but only if the transaction is entered into in good faith
30 and not for the purpose of evading the obligations of the landlord.

31 (c) The landlord and tenant of any dwelling unit, other than a single
32 family residence, may agree that the tenant is to perform specified repairs,
33 maintenance tasks, alterations or remodeling only if:

34 (1) The agreement of the parties is entered into in good faith, and
35 not to evade the obligations of the landlord, and is set forth in a separate
36 written agreement signed by the parties and supported by adequate
37 consideration;

38 (2) the work is not necessary to cure noncompliance with subsection
39 (a)(1) of this section; and

40 (3) the agreement does not diminish or affect the obligation of the
41 landlord to other tenants in the premises.

42 (d) The landlord may not treat performance of the separate agree-
43 ment described in subsection (c) of this section as a condition to any

1 obligation or the performance of any rental agreement. *No landlord shall*
2 *enter into any agreement or take any action that has the effect of pre-*
3 *venting any provider from offering cable or telecommunications services*
4 *to tenants. If a landlord enters into an agreement with a provider for the*
5 *provider to furnish services to its tenants, the agreement shall not create*
6 *an exclusive right to provide service for the provider but shall allow other*
7 *providers to compete for the tenants' business if another provider requests*
8 *to offer services of a like kind to the tenants. A landlord shall also allow*
9 *a new provider to request the terms and conditions of an agreement that*
10 *exists between the landlord and a provider. The terms and conditions of*
11 *the existing agreement shall be made available to a requesting provider*
12 *on a competitively neutral and nondiscriminatory basis. If a provider and*
13 *the landlord cannot agree on an appropriate rate of compensation, an*
14 *arbitrator shall be appointed to determine the appropriate level of com-*
15 *ensation due the landlord. The arbitrator shall be an individual who is*
16 *mutually agreeable to the parties. If the parties cannot agree, either one*
17 *or both of the parties may file a petition with the district court. A judge*
18 *may then appoint an arbitrator, the costs of whom will be borne by both*
19 *of the parties. No landlord may enter into an agreement and no provider*
20 *may enforce an agreement that is designed to circumvent rules prescribed*
21 *by the federal communications commission with respect to cable home*
22 *run wiring or inside wiring that is used to provide telecommunications*
23 *service to tenants.*

24 Sec. 3. K.S.A. 58-2543 and 58-2553 are hereby repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.

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