

## Substitute for HOUSE BILL No. 2357

By Committee on Judiciary

2-11

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1 AN ACT concerning housing; providing that court records in eviction  
2 actions in which the underlying rental agreement is governed by the  
3 residential landlord and tenant act shall be sealed for certain periods;  
4 requiring expungement of certain court records of such eviction  
5 actions; providing that certain violations of this act constitute  
6 unconscionable acts or practices under the provisions of the Kansas  
7 consumer protection act; requiring consideration of mediation in  
8 eviction actions in which the underlying rental agreement is governed  
9 by the residential landlord and tenant act unless the court finds that  
10 mediation would not aid the parties materially; amending K.S.A. 60-  
11 2617, 61-3804, 61-3806 and 61-3807 and repealing the existing  
12 sections.  
13

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

15 New Section 1. (a) (1) Upon the filing of a petition for eviction  
16 pursuant to K.S.A. 61-3801 et seq., and amendments thereto, in which the  
17 underlying rental agreement is governed by K.S.A. 58-2540 et seq., and  
18 amendments thereto, the court shall automatically seal the court file,  
19 including the petition commencing the action and any other pleadings,  
20 proof of service, any findings and orders of the court and all other papers,  
21 records, proceedings and evidence, including exhibits and transcripts of  
22 the testimony. Such filings and the allegations in the filings shall be  
23 confidential and shall not be disclosed to any person except as provided by  
24 this section.

25 (2) Upon the sealing of the court file, the case records and any  
26 information concerning the case shall not be made available or transferred  
27 to any third party and shall only be available to the following persons:

28 (A) The court and court staff;

29 (B) any party to the case and, if represented, such party's attorneys;

30 (C) a person with a valid court order authorizing access to the court  
31 file; and

32 (D) a person authorized to access the court file pursuant to paragraph  
33 (3).

34 (3) A court shall allow a person to access a court file sealed pursuant  
35 to this section if the person affirms to the court, in writing or  
36 electronically, that:

1 (A) The person is an attorney, other than a party's attorney described  
2 in paragraph (2), or is acting on behalf of the attorney;

3 (B) a party included in the court file has given written or verbal  
4 permission for the person to access the file;

5 (C) the person is only accessing the record for the purpose of:

6 (i) Providing legal advice to, or evaluating whether to enter an  
7 appearance on behalf of, the party who gave permission for the person to  
8 access the file; or

9 (ii) evaluating whether the matter is suitable for mediation or in  
10 preparation for a mediation between the parties included in the court  
11 record; and

12 (D) the person is not accessing the record for commercial purposes,  
13 other than as described in paragraph (3)(C).

14 (b) (1) Except as provided in paragraph (2), the court shall not unseal  
15 a case that is sealed pursuant to this section if the case:

16 (A) Does not result in a judgment;

17 (B) is dismissed, including, but not limited to, dismissal pursuant to a  
18 mediation agreement or agreement between the plaintiff and defendant; or

19 (C) results in a judgment entered in favor of the defendant.

20 (2) The court may unseal a case that is sealed pursuant to this section  
21 if the defendant requests such unsealing or the plaintiff and defendant  
22 agree to unsealing thereof.

23 (c) (1) Except as provided in paragraph (2), the court shall unseal a  
24 case that is sealed pursuant to this section if a default judgment or  
25 judgment is entered in favor of the plaintiff for monetary damages or  
26 possession, or both.

27 (2) The court shall decide at the time of judgment not to unseal a case  
28 described in paragraph (1) if:

29 (A) The plaintiff and defendant agree to keep the case sealed; or

30 (B) the court finds good cause or that it is in the best interest of  
31 justice to keep the case sealed. Good cause includes, but is not limited to:

32 (i) A tenant who is a protected person as defined in K.S.A. 58-25,137,  
33 and amendments thereto;

34 (ii) fault by both the plaintiff and defendant; or

35 (iii) any other identified safety, property or privacy interest.

36 (d) (1) A consumer reporting agency, tenant screening agency,  
37 property management company, landlord or those standing in the position  
38 of property management, or the attorney for any such agency or person,  
39 shall not collect or disseminate, cause to be disseminated or permit the  
40 dissemination of any eviction filing or eviction case information that is  
41 subject to automatic sealing by the court pursuant to this section and shall  
42 not request that applicants or tenants disclose a sealed or expunged  
43 eviction filing.

1 (2) Any violation of this subsection shall be deemed to be a deceptive  
2 or unconscionable act or practice under the provisions of the Kansas  
3 consumer protection act and subject to the remedies and enforcement  
4 provisions of the Kansas consumer protection act. The requirements and  
5 remedies of this subsection are in addition to any other requirements and  
6 remedies provided by law.

7 (e) (1) Except as otherwise provided in this subsection, a defendant in  
8 an eviction action in which the underlying rental agreement is governed by  
9 K.S.A. 58-2540 et seq., and amendments thereto, may make an electronic  
10 filing for an expungement at no cost. The court shall grant an  
11 expungement if three years have passed since judgment was entered in  
12 such action, the defendant shows that monetary obligations of the  
13 judgment, if any, are satisfied and the defendant has no additional  
14 judgment entered in an eviction action in which the underlying rental  
15 agreement is governed by K.S.A. 58-2540 et seq., and amendments  
16 thereto, within the three-year period.

17 (2) If a tenant has an additional judgment entered in an eviction  
18 action in which the underlying rental agreement is governed by K.S.A. 58-  
19 2540 et seq., and amendments thereto, within the three-year period  
20 described in paragraph (1), the preceding judgment shall not be expunged  
21 until the ensuing judgment is eligible for expungement.

22 (3) In accordance with federal law and requirements, a public housing  
23 authority may request access to eviction judgment history for the past  
24 three-year period for active applicants for federal housing assistance.

25 (4) An eviction action in which the underlying rental agreement is  
26 governed by K.S.A. 58-2540 et seq., and amendments thereto, and the  
27 defendant has an unsatisfied money judgment shall not be expunged unless  
28 the defendant and the plaintiff agree to such expungement, but the case  
29 may remain sealed as provided in subsection (c)(2).

30 (f) The judicial council shall develop a form to be utilized for  
31 obtaining expungement pursuant to this section.

32 Sec. 2. K.S.A. 60-2617 is hereby amended to read as follows: 60-  
33 2617. (a) (1) Upon filing of a criminal case or a case pursuant to the  
34 revised Kansas juvenile justice code in which an arrest warrant is being  
35 sought, the case shall be sealed by the court until such warrant has been  
36 executed or the request for such warrant is denied.

37 (2) All subpoenas issued in a criminal case or a case pursuant to the  
38 revised Kansas juvenile justice code shall be sealed by the court and a  
39 subpoena shall only be unsealed if the court makes a finding that unsealing  
40 such subpoena is in the interest of justice.

41 (3) The provisions of this subsection shall apply retroactively to any  
42 case or warrant information or subpoenas that are currently pending.

43 (4) Nothing in this subsection shall:

1 (A) Prohibit disclosure of warrant information, subpoenas, returns of  
2 service or other case information to law enforcement for the purposes of  
3 executing a warrant or serving a subpoena; or

4 (B) apply to a warrant issued pursuant to K.S.A. 22-2807, and  
5 amendments thereto.

6 (5) As used in this subsection, "seal" means that no information  
7 related to a case or warrant, including the existence of such case or  
8 warrant, shall be made available to the public. Subpoenas and returns of  
9 service for subpoenas shall not be made available to the public.

10 (b) In a civil or criminal case, the court, upon the court's own motion,  
11 may hold a hearing or any party may request a hearing to seal or redact the  
12 court records or to close a court proceeding. Reasonable notice of a  
13 hearing to seal or redact court records or to close a court proceeding shall  
14 be given to all parties in the case. In a criminal case, reasonable notice of a  
15 hearing to seal or redact court records or to close a court proceeding shall  
16 also be given to the victim, if ascertainable.

17 (c) After the hearing, the court may order the court files and records  
18 in the proceeding, or any part thereof, to be sealed or redacted or the court  
19 proceeding closed. If the court grants such an order, before closing  
20 proceedings or granting leave to file under seal, the court shall make and  
21 enter a written finding of good cause.

22 (d) In granting the order, the court shall recognize that the public has  
23 a paramount interest in all that occurs in a case, whether at trial or during  
24 discovery and in understanding disputes that are presented to a public  
25 forum for resolution.

26 (e) Good cause to close a proceeding or seal or redact records,  
27 whether upon the motion of a party, or on the court's own motion, does not  
28 exist unless the court makes a finding on the record that there exists an  
29 identified safety, property or privacy interest of a litigant or a public or  
30 private harm that predominates the case and such interest or harm  
31 outweighs the strong public interest in access to the court record and  
32 proceedings.

33 (f) Agreement of the parties shall be considered by the court but shall  
34 not constitute the sole basis for the sealing or redaction of court records or  
35 for closing the court proceeding.

36 (g) The provisions of this section shall not apply to proceedings under  
37 the revised Kansas code for care of children, K.S.A. 38-2201 et seq., and  
38 amendments thereto, the revised Kansas juvenile justice code, K.S.A. 38-  
39 2301 et seq., and amendments thereto, the Kansas adoption and  
40 relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto,  
41 *eviction actions pursuant to K.S.A. 61-3801 et seq., and amendments*  
42 *thereto, in which the underlying rental agreement is governed by K.S.A.*  
43 *58-2540 et seq., and amendments thereto, and section 1, and amendments*

1 *thereto*, to supreme court rules which allow motions, briefs, opinions and  
2 orders of the court to identify parties by initials or by familial relationship  
3 or to supreme court rules which require appellate court deliberations to be  
4 kept in strict confidence. Nothing in this section shall be construed to  
5 prohibit the issuance of a protective order pursuant to K.S.A. 60-226(c),  
6 and amendments thereto.

7 (h) The provisions of this section shall not preclude a court from  
8 allowing a settlement which includes a confidentiality clause to be filed  
9 under seal where the interests of justice would be served by such  
10 settlement being filed under seal.

11 Sec. 3. K.S.A. 61-3804 is hereby amended to read as follows: 61-  
12 3804. (a) The petition shall describe the premises for which possession is  
13 sought and why the plaintiff is seeking possession. If there is rent due for  
14 possession of the premises, the petition may include a request for  
15 judgment for that amount or the plaintiff may bring a subsequent lawsuit  
16 for that amount.

17 (b) *In an action in which the underlying rental agreement is governed*  
18 *by K.S.A. 58-2540 et seq., and amendments thereto, the petition, court*  
19 *records and file shall be sealed as provided by section 1, and amendments*  
20 *thereto.*

21 Sec. 4. K.S.A. 61-3806 is hereby amended to read as follows: 61-  
22 3806. (a) *Except as provided in subsection (c)*, a defendant shall either  
23 appear in person or by counsel at the time and date set forth in the  
24 summons or file on or before such date a written answer.

25 (b) The answer, when filed, shall contain the information as required  
26 ~~under subsection (b) of K.S.A. 61-2904(b)~~, and amendments thereto.

27 (c) *In an action in which the underlying rental agreement is governed*  
28 *by K.S.A. 58-2540 et seq., and amendments thereto, the court shall:*

29 (1) *Allow the defendant to appear by two-way electronic audio-video*  
30 *communication in lieu of the personal presence of the defendant; and*

31 (2) *consider mediation unless the court finds that mediation would*  
32 *not aid the parties materially or is impracticable.*

33 Sec. 5. K.S.A. 61-3807 is hereby amended to read as follows: 61-  
34 3807. (a) If a trial is necessary, the trial shall be conducted within 14 days  
35 after the appearance date stated in the summons.

36 (b) (1) *Except as provided in paragraph (2)*, no continuance shall be  
37 granted unless the defendant requesting a continuance shall file a bond  
38 with good and sufficient security approved by the court, conditioned for  
39 the payment of all damages and rent that may accrue if judgment is entered  
40 against the defendant.

41 (2) *In an action in which the underlying rental agreement is governed*  
42 *by K.S.A. 58-2540 et seq., and amendments thereto, the court shall order a*  
43 *continuance of not more than 14 days from the date that the mediation*

1 *order is entered if the parties are participating in mediation.*

2       Sec. 6. K.S.A. 60-2617, 61-3804, 61-3806 and 61-3807 are hereby  
3 repealed.

4       Sec. 7. This act shall take effect and be in force from and after its  
5 publication in the statute book.