

Substitute for HOUSE BILL No. 2357

By Committee on Judiciary

2-11

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

1 (3):

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

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

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

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

10 (i) ~~Providing legal advice to, or evaluating whether to enter an~~
11 ~~appearance on behalf of, the party who gave permission for the person to~~
12 ~~access the file; or~~

13 (ii) ~~evaluating whether the matter is suitable for mediation or in~~
14 ~~preparation for a mediation between the parties included in the court~~
15 ~~record; and~~

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

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

20 (A) ~~Does not result in a judgment;~~

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

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

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

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

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

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

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

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

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

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

40 (d) (1) ~~A consumer reporting agency, tenant screening agency,~~
41 ~~property management company, landlord or those standing in the position~~
42 ~~of property management, or the attorney for any such agency or person,~~
43 ~~shall not collect or disseminate, cause to be disseminated or permit the~~

1 dissemination of any eviction filing or eviction case information that is
2 subject to automatic sealing by the court pursuant to this section and shall
3 not request that applicants or tenants disclose a sealed or expunged
4 eviction filing.

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

11 (e)(1) Except as otherwise provided in this subsection, a defendant in
12 an eviction action in which the underlying rental agreement is governed by
13 K.S.A. 58-2540 et seq., and amendments thereto, may make an electronic
14 filing for an expungement {with the clerk of the district court} at no
15 cost. {Such filing shall be made under the docket number of such
16 eviction action. The defendant shall provide service of process to the
17 plaintiff in such action by return receipt delivery as described in
18 K.S.A. 60-303, and amendments thereto.

19 (2) The plaintiff in such action shall have 30 days after delivery of
20 such service of process to file with the court an objection to such
21 expungement. If an objection is filed, the court shall conduct a hearing
22 and determine whether such expungement will be granted pursuant to
23 this section. If no objection is filed, the court shall make such
24 determination without a hearing, and there shall be a presumption
25 that the monetary obligations of the judgment in such action, if any,
26 are satisfied.

27 (3) }The court shall grant an expungement if three years have passed
28 since judgment was entered in such action, the defendant shows that {the}
29 monetary obligations of the judgment, if any, are satisfied and the
30 defendant has no additional judgment entered in an eviction action in
31 which the underlying rental agreement is governed by K.S.A. 58-2540 et
32 seq., and amendments thereto, within the three-year period.

33 (2){(4)} If a tenant has an additional judgment entered in an eviction
34 action in which the underlying rental agreement is governed by K.S.A. 58-
35 2540 et seq., and amendments thereto, within the three-year period
36 described in paragraph (1), the preceding judgment shall not be expunged
37 until the ensuing judgment is eligible for expungement.

38 (3){(5)} In accordance with federal law and requirements, a public
39 housing authority may request access to eviction judgment history for the
40 past three-year period for active applicants for federal housing assistance.

41 (4){(6)} An eviction action in which the underlying rental agreement
42 is governed by K.S.A. 58-2540 et seq., and amendments thereto, and the
43 defendant has an unsatisfied money judgment shall not be expunged unless

1 the defendant and the plaintiff agree to such expungement, ~~but the case~~
2 ~~may remain sealed as provided in subsection (c)(2).~~

3 ~~{(b)}~~ The judicial council shall develop a form to be utilized for
4 obtaining expungement pursuant to this section.

5 ~~Sec. 2.—K.S.A. 60-2617 is hereby amended to read as follows: 60-~~
6 ~~2617. (a) (1) Upon filing of a criminal case or a case pursuant to the~~
7 ~~revised Kansas juvenile justice code in which an arrest warrant is being~~
8 ~~sought, the case shall be sealed by the court until such warrant has been~~
9 ~~executed or the request for such warrant is denied.~~

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

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

16 ~~(4) Nothing in this subsection shall:~~

17 ~~(A) Prohibit disclosure of warrant information, subpoenas, returns of~~
18 ~~service or other case information to law enforcement for the purposes of~~
19 ~~executing a warrant or serving a subpoena; or~~

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

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

26 ~~(b) In a civil or criminal case, the court, upon the court's own motion,~~
27 ~~may hold a hearing or any party may request a hearing to seal or redact the~~
28 ~~court records or to close a court proceeding. Reasonable notice of a~~
29 ~~hearing to seal or redact court records or to close a court proceeding shall~~
30 ~~be given to all parties in the case. In a criminal case, reasonable notice of a~~
31 ~~hearing to seal or redact court records or to close a court proceeding shall~~
32 ~~also be given to the victim, if ascertainable.~~

33 ~~(e) After the hearing, the court may order the court files and records~~
34 ~~in the proceeding, or any part thereof, to be sealed or redacted or the court~~
35 ~~proceeding closed. If the court grants such an order, before closing~~
36 ~~proceedings or granting leave to file under seal, the court shall make and~~
37 ~~enter a written finding of good cause.~~

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

42 ~~(e) Good cause to close a proceeding or seal or redact records,~~
43 ~~whether upon the motion of a party, or on the court's own motion, does not~~

1 exist unless the court makes a finding on the record that there exists an
2 identified safety, property or privacy interest of a litigant or a public or
3 private harm that predominates the ease and such interest or harm
4 outweighs the strong public interest in access to the court record and
5 proceedings.

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

9 (g) The provisions of this section shall not apply to proceedings under
10 the revised Kansas code for care of children, K.S.A. 38-2201 et seq., and
11 amendments thereto, the revised Kansas juvenile justice code, K.S.A. 38-
12 2301 et seq., and amendments thereto, the Kansas adoption and
13 relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto,
14 *eviction actions pursuant to K.S.A. 61-3801 et seq., and amendments*
15 *thereto, in which the underlying rental agreement is governed by K.S.A.*
16 *58-2540 et seq., and amendments thereto, and section 1, and amendments*
17 *thereto*, to supreme court rules which allow motions, briefs, opinions and
18 orders of the court to identify parties by initials or by familial relationship
19 or to supreme court rules which require appellate court deliberations to be
20 kept in strict confidence. Nothing in this section shall be construed to
21 prohibit the issuance of a protective order pursuant to K.S.A. 60-226(e),
22 and amendments thereto.

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

27 Sec. 3. K.S.A. 61-3804 is hereby amended to read as follows: 61-
28 3804. (a) The petition shall describe the premises for which possession is
29 sought and why the plaintiff is seeking possession. If there is rent due for
30 possession of the premises, the petition may include a request for
31 judgment for that amount or the plaintiff may bring a subsequent lawsuit
32 for that amount.

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

37 Sec. 4. {2.} K.S.A. 61-3806 is hereby amended to read as follows: 61-
38 3806. (a) *Except as provided in subsection (c),* A defendant shall either
39 appear in person or by counsel at the time and date set forth in the
40 summons or file on or before such date a written answer.

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

43 (c) *In an action in which the underlying rental agreement is governed*

1 *by K.S.A. 58-2540 et seq., and amendments thereto, the court shall:*

2 ~~(1) Allow the defendant to appear by two-way electronic audio-video~~
3 ~~communication in lieu of the personal presence of the defendant; and~~

4 ~~(2) consider mediation unless the court finds that mediation would~~
5 ~~not aid the parties materially or is impracticable.~~

6 Sec. ~~5.~~ {3.} K.S.A. 61-3807 is hereby amended to read as follows: 61-
7 3807. (a) If a trial is necessary, the trial shall be conducted within 14 days
8 after the appearance date stated in the summons.

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

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

18 Sec. ~~6.~~ {4.} K.S.A. ~~60-2617, 61-3804,~~ 61-3806 and 61-3807 are
19 hereby repealed.

20 Sec. ~~7.~~ {5.} This act shall take effect and be in force from and after its
21 publication in the ~~statute book~~ **Kansas register.**