SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE BILL NO. 2357

<u>As Recommended by House Committee on
Judiciary</u>

Brief*

Sub. for HB 2357 would create and amend law related to eviction proceedings for rental agreements subject to the Residential Landlord and Tenant Act to require that court records be sealed for a certain period of time; require expungement of certain court records; and require the consideration of mediation for most eviction actions.

Sealed Records

The bill would require a court to automatically seal the court file when a petition is filed for eviction under the Code of Civil Procedure for Limited Actions when the underlying rental agreement is subject to the Residential Landlord and Tenant Act (RLTA). These records would be confidential and could not be disclosed to any person, except as specified by the bill. The sealed records would include:

- The petition commencing the action and any other pleadings;

- Proof of service;

- Any findings and orders of the court; and

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- All other papers, records, proceedings, and evidence, including exhibits and transcripts of the testimony.

Upon the sealing of the court file, the bill would require the case records and any information concerning the case file to not be made available or transferred to any third party and only available to:

- The court and court staff;

- Any party to the case, and, if represented, such party's attorneys;

- A person with a valid court order authorizing access to the court file; and

- A person authorized to access the court file pursuant to the bill, as described below.

A court would be required to allow a person to access a sealed court file if the person affirms to the court, in writing or electronically, that:

- The person is an attorney, or is acting on behalf of the attorney, other than a party's attorney described above;

- A party included in the court file has given written or verbal permission for the person to access the file;

- The person is only accessing the record for the purpose of:
  - Providing legal advice to, or evaluating whether to enter an appearance on behalf of, the party who gave permission for the person to access the file; or

○ Evaluating whether the matter is suitable for mediation or in preparation for a mediation between the parties included in the court record; and

● The person is not accessing the record for commercial purposes.

Unsealing of Records

The bill would not allow a court to unseal a case that is sealed under its provisions if the case:

● Does not result in a judgment;

● Is dismissed, including, but not limited to, dismissal pursuant to a mediation agreement or agreement between the plaintiff and defendant; or

● Results in a judgment entered in favor of the defendant.

However, the bill would allow a court to unseal such case records if the defendant requests unsealing or the plaintiff and the defendant agree to the unsealing.

Judgment. A court would be required to unseal cases in which a judgment, including a default judgment, is entered in favor of the plaintiff for monetary damages or possession, or both.

However, the court would be required to decide at the time of judgment not to unseal a case if:

● The plaintiff and defendant agree to keep the case sealed; or

● The court finds good cause or that it is in the best interest of justice to keep the case sealed.

The bill would define "good cause" to mean, but not be limited to:

- A tenant who is a protected person as defined in continuing law governing housing protections for persons affected by domestic violence, sexual assault, human trafficking, or stalking;

- Fault by both the plaintiff and defendant; or

- Any other identified safety, property, or privacy interest.

Deceptive or Unconscionable Act

The bill would prohibit a consumer reporting agency, tenant screening agency, property management company, landlord, persons who have the standing of property management, or the attorney for any such agency or person from collecting or disseminating, or cause or permit such dissemination of any eviction filing or eviction case information that is subject to automatic sealing under the bill. The bill would also prohibit any of the above entities from requesting that applicants or tenants disclose a sealed or expunged eviction filing.

Any violation of the bill's collection or dissemination provisions would be deemed to be a deceptive or unconscionable act or practice under the Kansas Consumer Protection Act (KCPA). The bill would specify that these requirements and remedies could be accessed in addition to, rather than as a substitute for, other available requirements and remedies in the law.

The bill would provide an exception for a public housing authority operating under federal law and requirements to request access to eviction judgment history for the past three-year period for active applicants for federal housing assistance.

Expungement

A defendant in an eviction action covered by the bill would be allowed to make an electronic filing for an expungement at no cost. The court would be required to grant such expungement if:

- Three years have passed since judgment was entered in such action;

- The defendant shows that monetary obligations of the judgment, if any, are satisfied; and

- The defendant has no additional judgment entered in an eviction action covered by the bill within the three-year period.

Additional Judgment

If a tenant has an additional judgment entered in an eviction action covered by the bill within such three-year period, the preceding judgment could not be expunged until the ensuing judgment is eligible for expungement.

Unsatisfied Money Judgment

If a tenant has an unsatisfied money judgment entered in an eviction action covered by the bill, the records could not be expunged unless the defendant and plaintiff agree to such expungement. However, the bill would allow the case to remain sealed.

Judicial Council Form

The bill would require the Judicial Council to develop a form to be utilized for obtaining expungement pursuant to the bill.

Application to Sealing and Unsealing of Case Records in Code of Civil Procedure

The bill would amend law governing the sealing and unsealing of case records in the Code of Civil Procedure to specify these provisions would not apply to eviction actions covered by the bill.

Mediation and Defendant Appearance

For eviction proceedings covered by the bill, a defendant would be allowed to appear by two-way electronic audio-video communication in lieu of appearing in person.

The bill would require a court to consider mediation of the case unless the court finds that mediation would not aid both parties materially or is impracticable.

Under law applicable to eviction proceedings under the RLTA, a trial is required to be conducted within 14 days after the appearance date stated in the summons and it would not allow a continuance unless a bond is filed. The bill would allow a court to order a continuance of not more than 14 days from the date that the mediation order is entered if both parties are participating in court-ordered mediation.

Background

The bill was introduced by the House Committee on Judiciary at the request of Representatives Howerton and Howell.

House Committee on Judiciary

In the House Committee hearing, **proponent** testimony was provided Representative Howell; a Wichita City Council member; and representatives of the City of Wichita, Johnson County Government, Kansas Interfaith Action, and United

Community Services. The proponents generally stated that the bill would allow persons who are experiencing domestic violence to keep their residential information sealed, which would provide additional protection from abuse.

Written-only proponent testimony was provided by a Wichita City Council member; representatives of Health Forward Foundation, Kansas Action for Children, Kansas Legal Services, and Lawrence-Douglas County Public Health; and two private citizens.

Neutral testimony was provided by a representative of the Office of Judicial Administration, who expressed concern that the bill's provisions could burden courts and staff responsible for tracking eviction cases.

No other testimony was provided.

The House Committee adopted a number of amendments to the bill before recommending a substitute bill be created and recommended favorably for passage. The amendments included:

- Expanding the persons to whom sealed case records could be made available;

- Clarifying language concerning when judgment is entered in favor of the plaintiff;

- Clarifying language concerning when during the process a court may decide not to unseal a case pursuant to the bill;

- Replacing "victim of domestic violence" with "protected person" as defined in continuing law;

- Modifying the collection and dissemination prohibition provision to include attorneys for entities described in the bill and specify such entities could

not request that applicants or tenants disclose a sealed or expunged eviction filing;

- Removing a duplicative provision allowing any person to bring a private action for violations of the collection and dissemination prohibition provisions pursuant to the KCPA;

- Modifying provisions related to expungement to allow electronic filing for expungements at no cost, rather than providing for an automatic expungement process, and to increase from two years to three years the time that must pass in order for expungement to be granted;

- Requiring the Judicial Council to develop an expungement form;

- Requiring the court to consider, rather than order, mediation;

- Allowing the court to not consider mediation if it is impracticable;

- Clarifying that continuances granted for the purpose of mediation cannot be more than 14 days from the date the mediation order is entered; and

- Making a technical amendment to replace an outdated version of a statute.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General indicates enactment of the bill would increase the number of complaints it currently processes regarding eviction actions, which would require the Office to hire 2.00 FTE positions. The Office states the bill could result in litigation that would require it to defend the bill.

The Office states the bill would increase expenditures by $740,065 in FY 2026 and $752,069 in FY 2027 from the SGF. Of the FY 2026 amount, $133,904 would be for 1.00 Assistant Attorney General position; $60,839 would be for 1.00 Investigator position; $45,322 would be for office space, training, technology, and other expenditures; and $500,000 would be for potential litigation costs for the Office to defend the bill. The FY 2027 amount assumes a 5.0 percent increase of expenditures associated with the 2.00 positions over the FY 2026 amount along with an additional $500,000 in litigation costs.

The Office of Judicial Administration (OJA) indicates enactment of the bill would have a significant fiscal effect on expenditures of the Judicial Branch. OJA states that the bill would require district court clerks to manually seal court files, make certain files available to certain parties, manually determine and unseal such files, and manually track and process expungements after two years. OJA also indicates judges and district court clerks would be required to schedule additional hearings, file motions, and send notices. OJA states enactment of the bill would significantly increase the workload of district court clerks, who processed approximately 32,400 eviction cases in 2023 and 2024 combined. OJA indicates it may be possible to reprogram the centralized case management system to automatically perform some of the requirements of the bill at an additional cost. However, a fiscal effect cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2026 Governor's Budget Report*.

Eviction; Residential Landlord and Tenant Act; expungement; sealed records; mediation