

## SENATE BILL No. 466

By Senator Faust Goudeau

2-3

1 AN ACT concerning housing; relating to denial of housing or other  
2 adverse actions against tenants or prospective tenants on the basis of  
3 past evictions or rental arrears; prohibiting the reporting by consumer  
4 reporting agencies or the use by landlords for adverse action against  
5 tenants of such information after three years from the date of such  
6 evictions or rental arrears; requiring consumer reporting agencies to  
7 provide an opportunity for individuals to explain any record of  
8 evictions or rental arrears; providing that court records of an eviction  
9 action be sealed for certain periods; providing that violations of such  
10 provisions by landlords or consumer reporting agencies shall constitute  
11 unconscionable acts or practices under the provisions of the Kansas  
12 consumer protection act; amending K.S.A. 50-626, 60-2617 and 61-  
13 3804 and repealing the existing sections.  
14

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

16 New Section 1. As used in sections 1 through 4, and amendments  
17 thereto:

18 (a) "Adverse action" means a denial or cancellation of, an increase in  
19 any charge for or any other adverse or unfavorable change in the terms of a  
20 rental agreement applied for by a consumer, offered to a consumer or  
21 previously entered into by a consumer for a dwelling unit.

22 (b) "Consumer" means an individual.

23 (c) "Consumer report" means any written, oral or other  
24 communication of any information by a consumer reporting agency  
25 bearing on a consumer's credit worthiness, credit standing, credit capacity,  
26 character, general reputation, personal characteristics, eviction history,  
27 rental arrears or other residential or tenant history or mode of living that is  
28 used or expected to be used or collected, in whole or in part, for the  
29 purpose of serving as a factor in establishing the consumer's eligibility for:

30 (1) Credit or insurance to be used primarily for personal, family or  
31 household purposes;

32 (2) employment purposes;

33 (3) renting a dwelling unit from a landlord as a tenant; or

34 (4) other purposes as permitted by federal or state law.

35 (d) "Consumer reporting agency" means any person that for monetary  
36 fees, dues or on a cooperative nonprofit basis, regularly engages, in whole

1 or in part, in the practice of assembling or evaluating consumer credit  
2 information or other information on consumers for the purpose of  
3 furnishing consumer reports to third parties and uses any means or facility  
4 of interstate commerce for the purpose of preparing or furnishing  
5 consumer reports. "Consumer reporting agency" includes any consumer  
6 reporting agency that compiles and maintains files on consumers on a  
7 nationwide basis, reseller or specialty consumer reporting agency.

8 (e) "Consumer reporting agency that compiles and maintains files on  
9 consumers on a nationwide basis" means a consumer reporting agency that  
10 regularly engages in the practice of assembling or evaluating, and  
11 maintaining, for the purpose of furnishing consumer reports to third parties  
12 bearing on a consumer's credit worthiness, credit standing, or credit  
13 capacity, each of the following regarding consumers residing nationwide:

14 (1) Public record information; and

15 (2) credit account information from persons who furnish such  
16 information regularly and in the ordinary course of business.

17 (f) "Dwelling unit" means a structure or the part of a structure that is  
18 used as a home, residence or sleeping place by one person who maintains a  
19 household or by two or more persons who maintain a common household.  
20 "Dwelling unit" does not include real property used to accommodate a  
21 manufactured home or mobile home, unless such manufactured home or  
22 mobile home is rented or leased by the landlord.

23 (g) "File" when used in connection with information on any  
24 consumer, means all of the information on the consumer recorded and  
25 retained by a consumer reporting agency regardless of how the  
26 information is stored.

27 (h) "Landlord" means the owner, lessor or sublessor of a dwelling  
28 unit, or the building of which it is a part, and the manager of the premises.

29 (i) "Owner" means one or more persons, jointly or severally, in whom  
30 is vested all or part of the:

31 (1) Legal title to property; or

32 (2) beneficial ownership and a right to prevent use and enjoyment of  
33 the premises, including a mortgagee in possession.

34 (j) "Person" means any individual, partnership, corporation, limited  
35 liability company, business trust, estate, cooperative, association or other  
36 for-profit or nonprofit entity. "Person" does not include any governmental  
37 agency or other governmental entity.

38 (k) "Premises" means a dwelling unit, and the structure of which it is  
39 a part, and facilities and appurtenances therein and grounds, areas and  
40 facilities held out for the use of tenants generally or the use of which is  
41 promised to the tenant.

42 (l) "Rental agreement" means all agreements whether written or oral  
43 and enforceable rules and regulations adopted by a landlord pursuant to

1 K.S.A. 58-2556, and amendments thereto, embodying the terms and  
2 conditions concerning the use and occupancy of a dwelling unit and  
3 premise.

4 (m) "Rental arrears" means any late, unpaid or overdue rent and any  
5 adverse information pertaining to the credit worthiness, credit standing,  
6 credit capacity or an ability to make rental payments of a consumer arising  
7 from a current or prior rental agreement entered into by the consumer.

8 (n) "Reseller" means a consumer reporting agency that:

9 (1) Assembles and merges information contained in the database of  
10 another consumer reporting agency or multiple consumer reporting  
11 agencies concerning any consumer for purposes of furnishing such  
12 information to any third party; and

13 (2) does not maintain a database of the assembled or merged  
14 information from which new consumer reports are produced.

15 (o) "Residential or tenant history" includes any information relating  
16 to an eviction or to rental arrears.

17 (p) "Specialty consumer reporting agency" means a consumer  
18 reporting agency that compiles and maintains files on consumers relating  
19 to:

- 20 (1) Medical records or payments;
- 21 (2) residential or tenant history;
- 22 (3) check writing history;
- 23 (4) employment history; or
- 24 (5) insurance claims.

25 (q) "Tenant" means a consumer entitled under a rental agreement to  
26 occupy a dwelling unit to the exclusion of others.

27 New Sec. 2. (a) (1) A consumer reporting agency shall not make or  
28 furnish a consumer report that contains residential or tenant history that is  
29 adverse to the consumer unless the consumer reporting agency has  
30 contacted the consumer, advised the consumer of the residential or tenant  
31 history to be included in such consumer report and offered the consumer  
32 an opportunity to provide an explanation with respect to any such history.  
33 The consumer reporting agency shall attempt to contact the consumer by  
34 means of first-class mail addressed to the most current address of record of  
35 the consumer, telephone to the most recent telephone number of record of  
36 the consumer, if any, and email to the most recent email address of record  
37 of the consumer, if any. Any explanation provided by the consumer shall  
38 be included in the consumer report by the consumer reporting agency.

39 (2) The consumer report shall include a record of such attempts to  
40 contact the consumer, and if the consumer reporting agency failed to  
41 establish contact with the consumer, the reason for such failure. The  
42 consumer reporting agency shall permit and provide the consumer with the  
43 opportunity to provide an explanation, whether verbally or in writing by

1 mail or email.

2       (3) The consumer report shall not be furnished until the consumer has  
3 provided an explanation for any adverse residential or tenant history that is  
4 included in the consumer report or 15 business days after the date of  
5 mailing, by first-class mail, of the request for an explanation of the adverse  
6 residential or tenant history, whichever occurs first. In efforts to contact  
7 the consumer, the consumer reporting agency shall advise the consumer of  
8 such deadline and provide a mailing address, email address and telephone  
9 number by which the consumer may provide an explanation.

10     (b) No consumer reporting agency shall make any consumer report  
11 containing any information or record pertaining to:

12       (1) An eviction of the consumer by a landlord from a dwelling unit  
13 that antedate the report by more than three years; or

14       (2) rental arrears of the consumer, including accounts placed for  
15 collection or charged to profit and loss that antedate the report by more  
16 than three years. The three-year period shall begin with respect to any  
17 rental arrears or delinquent account placed for collection, internally or by  
18 referral to a third party, whichever is earlier, charged to profit and loss or  
19 subjected to any similar action, upon the expiration of the 180-day period  
20 beginning on the date of the commencement of the delinquency that  
21 immediately preceded the collection activity, charge to profit and loss or  
22 similar action.

23       (c) In considering whether to enter into a rental agreement with a  
24 consumer for a dwelling unit or as a basis for taking any adverse action  
25 against a tenant, no landlord shall:

26       (1) Consider any residential or tenant history prohibited by subsection  
27 (b), whether provided by a consumer reporting agency, contained in a  
28 consumer report or obtained by other means from any public or private  
29 source; or

30       (2) consider any consumer report containing any residential or tenant  
31 history that does not include an explanation by the consumer or a record of  
32 attempts to contact such consumer as required by subsection (a).

33       (d) If a landlord declines to enter into a rental agreement with a  
34 consumer for a dwelling unit, cancels such a rental agreement with a  
35 tenant or alters the terms of such a rental agreement adversely to a tenant,  
36 the landlord shall provide the consumer or tenant with any consumer  
37 report or any residential or tenant history from any public or private source  
38 obtained, consulted or considered by the landlord with respect to such  
39 adverse action.

40      New Sec. 3. A violation of any provision of section 2, and  
41 amendments thereto, by a landlord or a consumer reporting agency or a  
42 violation of section 4(d), and amendments thereto, by a landlord is a  
43 deceptive act or practice under the provisions of the Kansas consumer

1 protection act and shall be subject to any and all of the enforcement  
2 provisions of the Kansas consumer protection act.

3       New Sec. 4. (a) Upon the filing of a petition for eviction pursuant to  
4 K.S.A. 61-3801 et seq., and amendments thereto, the court shall  
5 automatically seal the court file, including the petition commencing the  
6 action and any other pleadings, proof of service, any findings and orders of  
7 the court and all other papers, records, proceedings and evidence,  
8 including exhibits and transcript of the testimony. Such filings and the  
9 allegations therein shall be confidential and shall not be disclosed to any  
10 person except as provided by this section. Upon the sealing of the court  
11 file, the case records and any information concerning the case shall only be  
12 available to the following persons and shall not be made available or  
13 transferred to any third party:

14       (1) The tenant whose court file is sealed and any party or attorney  
15 who has made an appearance in the case;

16       (2) the court; or

17       (3) the clerk of the court responsible for maintaining records.

18       (b) The court shall order the court file to be opened:

19       (1) Upon the request of the tenant; or

20       (2) on order of the court upon a showing of compelling need.

21       (c) If the eviction proceeding results in a judgment for possession in  
22 favor of the landlord, the court file shall be permanently sealed three years  
23 after the final resolution of the eviction proceeding, except that the court  
24 shall order the court file to be opened:

25       (1) Upon written request of the individual whose records are sealed;  
26 or

27       (2) on order of the court upon a showing of compelling need.

28       Sec. 5. K.S.A. 50-626 is hereby amended to read as follows: 50-626.

29       (a) No supplier shall engage in any deceptive act or practice in connection  
30 with a consumer transaction.

31       (b) Deceptive acts and practices include, but are not limited to, the  
32 following, each of which is hereby declared to be a violation of this act,  
33 whether or not any consumer has in fact been misled:

34       (1) Representations made knowingly or with reason to know that:

35           (A) *The* property or services have sponsorship, approval, accessories,  
36 characteristics, ingredients, uses, benefits or quantities that they do not  
37 have;

38           (B) the supplier has a sponsorship, approval, status, affiliation or  
39 connection that the supplier does not have;

40           (C) *the* property is original or new, if such property has been  
41 deteriorated, altered, reconditioned, repossessed or is ~~second-hand~~ *second*  
42 *hand* or otherwise used to ~~an~~ the extent that *such property* is materially  
43 different from the representation;

1       (D) *the* property or services are of particular standard, quality, grade,  
2 style or model, if they are of another ~~which~~ *that* differs materially from the  
3 representation;

4       (E) the consumer will receive a rebate, discount or other benefit as an  
5 inducement for entering into a consumer transaction in return for giving  
6 the supplier the names of prospective consumers or otherwise helping the  
7 supplier to enter into other consumer transactions, if receipt of benefit is  
8 contingent on an event occurring after the consumer enters into the  
9 transaction;

10      (F) *the* property or services has uses, benefits or characteristics unless  
11 the supplier relied upon and possesses a reasonable basis for making such  
12 representation; or

13      (G) use, benefit or characteristic of property or services has been  
14 proven or otherwise substantiated unless the supplier relied upon and  
15 possesses the type and amount of proof or substantiation represented to  
16 exist;

17      (2) the willful use, in any oral or written representation, of  
18 exaggeration, falsehood, innuendo or ambiguity as to a material fact;

19      (3) the willful failure to state a material fact, or the willful  
20 concealment, suppression or omission of a material fact;

21      (4) disparaging the property, services or business of another by  
22 making, knowingly or with reason to know, false or misleading  
23 representations of material facts;

24      (5) offering property or services without intent to sell them;

25      (6) offering property or services without intent to supply reasonable,  
26 expectable public demand, unless the offer discloses the limitation;

27      (7) making false or misleading representations, knowingly or with  
28 reason to know, of fact concerning the reason for, existence of or amounts  
29 of price reductions, or the price in comparison to prices of competitors or  
30 one's own price at a past or future time;

31      (8) falsely stating, knowingly or with reason to know, that a consumer  
32 transaction involves consumer rights, remedies or obligations;

33      (9) falsely stating, knowingly or with reason to know, that services,  
34 replacements or repairs are needed;

35      (10) falsely stating, knowingly or with reason to know, the reasons  
36 for offering or supplying property or services at sale or discount prices;

37      (11) sending or delivering a solicitation for goods or services which  
38 could reasonably be interpreted or construed as a bill, invoice or statement  
39 of account due, unless:

40       (A) Such solicitation contains the following notice, on its face, in  
41 conspicuous and legible type in contrast by typography, layout or color  
42 with other printing on its face:

43        "THIS IS A SOLICITATION FOR THE PURCHASE OF GOODS OR

1 SERVICES AND NOT A BILL, INVOICE OR STATEMENT OF  
2 ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE  
3 ANY PAYMENTS UNLESS YOU ACCEPT THIS OFFER"; and

4 (B) such solicitation, if made by any classified telephone directory  
5 service not affiliated with a local telephone service in the area of service,  
6 contains the following notice, on its face, in a prominent and conspicuous  
7 manner:

8 " IS NOT  
9 (name of telephone directory service)

10 AFFILIATED WITH ANY LOCAL TELEPHONE COMPANY";

11 (12) (A) using, in any printed advertisement, an assumed or fictitious  
12 name for the conduct of such person's business that includes the name of  
13 any municipality, community or region or other description of the  
14 municipality, community or region in this state in such a manner as to  
15 suggest that such person's business is located in such municipality,  
16 community or region unless:

17 (A)(i) Such person's business is, in fact, located in such municipality,  
18 community or region; or

19 (B)(ii) such person includes in any such printed advertisement the  
20 complete street and city address of the location from which such person's  
21 business is actually conducted. If located outside of Kansas, the state in  
22 which such person's business is located also shall be included.

23 (B) The provisions of this subsection shall not apply to the use of any  
24 trademark or service mark registered under the laws of this state or under  
25 federal law; any such name that, when applied to the goods or services of  
26 such person's business, is merely descriptive of them; or any such name  
27 that is merely a surname. Nothing in this subsection shall be construed to  
28 impose any liability on any publisher when such publisher had no  
29 knowledge the business was not, in fact, located in such municipality,  
30 community or region;

31 (13) (A) making an oral solicitation for products or services based on  
32 a mortgage trigger lead unless the solicitation clearly and conspicuously  
33 states in the initial phase of the solicitation that the solicitor is not  
34 affiliated with the lender or broker with which the consumer initially  
35 applied and that the solicitation is based on personal information about the  
36 consumer that was purchased, directly or indirectly, from a consumer  
37 reporting agency without the knowledge or permission of the lender or  
38 broker with which the consumer initially applied;

39 (B) making a written solicitation for products or services based on a  
40 mortgage trigger lead unless the solicitation clearly and conspicuously  
41 states on the first page of the solicitation that the solicitor is not affiliated  
42 with the lender or broker with which the consumer initially applied and  
43 that the solicitation is based on personal information about the consumer

1 that was purchased, directly or indirectly, from a consumer reporting  
2 agency without the knowledge or permission of the lender or broker with  
3 which the consumer initially applied. Clear and conspicuous shall include  
4 legible type in contrast by typography, layout or color with other printing  
5 on the first page of the correspondence; and

6 (C) any solicitor under clause (A) or (B) shall be in compliance with  
7 the provisions of the Kansas mortgage business act, unless otherwise  
8 exempted from such act, and any other law or regulation; *and*

9 (14) failing to release funds representing an insurance settlement  
10 payment for damage to real property subject to a mortgage by the  
11 mortgage holder to the mortgagor within 30 days after receiving written  
12 proof that the damaged property is replaced or otherwise repaired to the  
13 satisfaction of the mortgagor and the mortgage holder. Any person who  
14 submits false information regarding the condition of the property shall be  
15 liable in damages to the mortgage holder or the mortgage holder's assignee  
16 for the amount of the funds together with interest thereon, attorney fees,  
17 and any additional damages that the mortgage holder or the mortgage  
18 holder's assignee has incurred; *and*

19 (15) *in addition to or in lieu of any applicable remedy pursuant to the*  
20 *residential landlord and tenant act, willfully violating the provisions of*  
21 *section 2, and amendments thereto.*

22 Sec. 6. K.S.A. 60-2617 is hereby amended to read as follows: 60-  
23 2617. (a) (1) Upon filing of a criminal case or a case pursuant to the  
24 revised Kansas juvenile justice code in which an arrest warrant is being  
25 sought, the case shall be sealed by the court until such warrant has been  
26 executed or the request for such warrant is denied.

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

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

33 (4) Nothing in this subsection shall:

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

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

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

43 (b) In a civil or criminal case, *including, but not limited to,*

1     *residential eviction actions pursuant to K.S.A. 61-3801 et seq., and*  
2     *amendments thereto*, the court, upon the court's own motion, may hold a  
3     hearing or any party may request a hearing to seal or redact the court  
4     records or to close a court proceeding. Reasonable notice of a hearing to  
5     seal or redact court records or to close a court proceeding shall be given to  
6     all parties in the case. In a criminal case, reasonable notice of a hearing to  
7     seal or redact court records or to close a court proceeding shall also be  
8     given to the victim, if ascertainable.

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

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

18       (e) Good cause to close a proceeding or seal or redact records,  
19    whether upon the motion of a party, or on the court's own motion, does not  
20    exist unless the court makes a finding on the record that there exists an  
21    identified safety, property or privacy interest of a litigant or a public or  
22    private harm that predominates the case and such interest or harm  
23    outweighs the strong public interest in access to the court record and  
24    proceedings.

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

28       (g) The provisions of this section shall not apply to proceedings under  
29    the revised Kansas code for care of children, K.S.A. 38-2201 et seq., and  
30    amendments thereto, the revised Kansas juvenile justice code, K.S.A. 38-  
31    2301 et seq., and amendments thereto, the Kansas adoption and  
32    relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto, *to*  
33    *residential eviction actions pursuant to K.S.A. 61-3801 et seq., and*  
34    *amendments thereto, if application of the provisions of this section would*  
35    *conflict with the provisions of section 4, and amendments thereto, to*  
36    *supreme court rules which allow motions, briefs, opinions and orders of*  
37    *the court to identify parties by initials or by familial relationship or to*  
38    *supreme court rules which require appellate court deliberations to be kept*  
39    *in strict confidence. Nothing in this section shall be construed to prohibit*  
40    *the issuance of a protective order pursuant to K.S.A. 60-226(c), and*  
41    *amendments thereto.*

42       (h) The provisions of this section shall not preclude a court from  
43    allowing a settlement which includes a confidentiality clause to be filed

1 under seal where the interests of justice would be served by such  
2 settlement being filed under seal.

3 Sec. 7. K.S.A. 61-3804 is hereby amended to read as follows: 61-  
4 3804. (a) The petition shall describe the premises for which possession is  
5 sought and why the plaintiff is seeking possession. If there is rent due for  
6 possession of the premises, the petition may include a request for  
7 judgment for that amount or the plaintiff may bring a subsequent lawsuit  
8 for that amount.

9 (b) *The petition, court records and file shall be sealed pursuant to  
10 section 4, and amendments thereto.*

11 Sec. 8. K.S.A. 50-626, 60-2617 and 61-3804 are hereby repealed.

12 Sec. 9. This act shall take effect and be in force from and after its  
13 publication in the statute book.