

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.