

SENATE BILL No. 485

By Senator Holscher

2-4

1 AN ACT concerning housing; relating to the residential landlord and
2 tenant act; requiring landlords to consider certain income of a tenant or
3 prospective tenant when demonstrating income as a condition for
4 qualifying for housing; providing that court records in eviction actions
5 in which the underlying rental agreement is governed by such act shall
6 be sealed for certain periods; requiring expungement of certain court
7 records of such eviction actions; requiring mediation in eviction actions
8 in which the underlying rental agreement is governed by such act
9 unless the court finds that mediation would not aid the parties
10 materially; providing that certain violations of this act constitute
11 deceptive or unconscionable acts or practices under the provisions of
12 the Kansas consumer protection act; amending K.S.A. 60-2617, 61-
13 3804, 61-3806 and 61-3807 and repealing the existing sections.
14

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

16 New Section 1. (a) If a landlord requires a tenant or prospective
17 tenant to demonstrate income as a condition of qualifying for housing, all
18 income shall be considered.

19 (b) Except as provided further, as used in this section, "income"
20 means any lawful source of money paid directly or indirectly to a renter or
21 buyer of housing, including, but not limited to, any: (1) Lawful profession
22 or occupation; (2) government or private income, assistance, grant, or loan
23 program; (3) gift, inheritance, pension, annuity, alimony, child support or
24 other consideration or benefit; and (4) sale or pledge of property or interest
25 in property. "Income" does not include any federal housing assistance
26 issued under section 8 of the United States housing act of 1937, 42 U.S.C.
27 § 1437f.

28 (c) Any violation of this section shall be deemed to be a deceptive or
29 unconscionable act or practice under the provisions of the Kansas
30 consumer protection act and subject to the remedies and enforcement
31 provisions of the Kansas consumer protection act. The requirements and
32 remedies of this subsection are in addition to any other requirements and
33 remedies provided by law.

34 (d) This section shall be a part of and supplemental to the residential
35 landlord and tenant act.

36 New Sec. 2. (a) Upon the filing of a petition for eviction pursuant to

1 K.S.A. 61-3801 et seq., and amendments thereto, in which the underlying
2 rental agreement is governed by K.S.A. 58-2540 et seq., and amendments
3 thereto, the court shall automatically seal the court file, including the
4 petition commencing the action and any other pleadings, proof of service,
5 any findings and orders of the court and all other papers, records,
6 proceedings and evidence, including exhibits and transcripts of the
7 testimony. Such filings and the allegations in the filings shall be
8 confidential and shall not be disclosed to any person except as provided by
9 this section. Upon the sealing of the court file, the case records and any
10 information concerning the case shall not be made available or transferred
11 to any third party and shall only be available to the following persons:

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

14 (2) the court; and

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

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

18 (A) Does not result in a judgment;

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

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

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

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

28 (2) The court shall not unseal a case described in paragraph (1) if:

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

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 victim of domestic violence;

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

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

35 (d) (1) A consumer reporting agency, tenant screening agency,
36 property management company, landlord or those standing in the position
37 of property management shall not collect or disseminate, cause to be
38 disseminated or permit the dissemination of any eviction filing or eviction
39 case information that is subject to automatic sealing by the court pursuant
40 to this section.

41 (2) Any violation of this subsection shall be deemed to be a deceptive
42 or unconscionable act or practice under the provisions of the Kansas
43 consumer protection act and subject to the remedies and enforcement

1 provisions of the Kansas consumer protection act. The requirements and
2 remedies of this subsection are in addition to any other requirements and
3 remedies provided by law.

4 (e) (1) Except as otherwise provided in this subsection, an unsealed
5 or public record of default judgment or judgment in an eviction action in
6 which the underlying rental agreement is governed by K.S.A. 58-2540 et
7 seq., and amendments thereto, shall be automatically expunged if the
8 judgment, including a monetary award, if any, is satisfied and two years
9 have passed from the date of judgment.

10 (2) If a tenant has an additional judgment entered in an eviction
11 action in which the underlying rental agreement is governed by K.S.A. 58-
12 2540 et seq., and amendments thereto, within the two-year period
13 described in paragraph (1), the preceding judgment shall not be expunged
14 until the ensuing judgment is eligible for automatic expungement at two
15 years after the most recent judgment.

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

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

24 Sec. 3. K.S.A. 60-2617 is hereby amended to read as follows: 60-
25 2617. (a) (1) Upon filing of a criminal case or a case pursuant to the
26 revised Kansas juvenile justice code in which an arrest warrant is being
27 sought, the case shall be sealed by the court until such warrant has been
28 executed or the request for such warrant is denied.

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

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

35 (4) Nothing in this subsection shall:

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

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

41 (5) As used in this subsection, "seal" means that no information
42 related to a case or warrant, including the existence of such case or
43 warrant, shall be made available to the public. Subpoenas and returns of

1 service for subpoenas shall not be made available to the public.

2 (b) In a civil or criminal case, the court, upon the court's own motion,
3 may hold a hearing or any party may request a hearing to seal or redact the
4 court records or to close a court proceeding. Reasonable notice of a
5 hearing to seal or redact court records or to close a court proceeding shall
6 be given to all parties in the case. In a criminal case, reasonable notice of a
7 hearing to seal or redact court records or to close a court proceeding shall
8 also be 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,
33 *eviction actions pursuant to K.S.A. 61-3801 et seq., in which the*
34 *underlying rental agreement is governed by K.S.A. 58-2540 et seq., and*
35 *amendments thereto, and section 2, and amendments thereto,* to supreme
36 court rules which allow motions, briefs, opinions and orders of the court to
37 identify parties by initials or by familial relationship or to supreme court
38 rules which require appellate court deliberations to be kept in strict
39 confidence. Nothing in this section shall be construed to prohibit the
40 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. 4. 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) *In an action in which the underlying rental agreement is governed
10 by K.S.A. 58-2540 et seq., and amendments thereto, the petition, court
11 records and files shall be sealed as provided by section 2, and
12 amendments thereto.*

13 Sec. 5. K.S.A. 61-3806 is hereby amended to read as follows: 61-
14 3806. (a) *Except as provided in subsection (c), a defendant shall either
15 appear in person or by counsel at the time and date set forth in the
16 summons or file on or before such date a written answer.*

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

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

21 (1) *Allow the defendant to appear by two-way electronic audio-video
22 communication between the defendant and the judge in lieu of personal
23 presence of the defendant; and*

24 (2) *order mediation unless the court finds that mediation would not
25 aid the parties materially.*

26 Sec. 6. K.S.A. 61-3807 is hereby amended to read as follows: 61-
27 3807. (a) If a trial is necessary, the trial shall be conducted within 14 days
28 after the appearance date stated in the summons.

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

34 (2) *In an action in which the underlying rental agreement is governed
35 by K.S.A. 58-2540 et seq., and amendments thereto, the court shall order a
36 continuance if the parties are participating in mediation.*

37 Sec. 7. K.S.A. 60-2617, 61-3804, 61-3806 and 61-3807 are hereby
38 repealed.

39 Sec. 8. This act shall take effect and be in force from and after its
40 publication in the statute book.