



SUPREME COURT OF KANSAS

KANSAS JUDICIAL CENTER

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House Government, Technology and Security Committee
Neutral Testimony on
HB 2700 – Redaction of Social Security Numbers

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Thank you, Chairman Sloan and members of the committee, for allowing me to be here today to provide neutral testimony on HB 2700. I am Sarah Hoskinson, Deputy Special Counsel to the Chief Justice, and I appear here today on behalf of the Kansas Judicial Branch.

We respectfully request that the committee consider the attached amendment to HB 2700 that would extend the exemption for court records found in K.S.A. 75-3520(a)(2) to the newly proposed subsection (a)(3). Currently, the language in K.S.A. 75-3520(a) does not apply to any documents filed in the official records of a court. Because HB 2700 does not include new paragraph (a)(3) in the exemption under (a)(2), it would appear that HB 2700 would require courts to review for and redact social security numbers from the hundreds of thousands of pages of court records that pass through the hands of court employees each year. This would not only create a substantial burden on court staff, it could drastically limit the manner in which members of the public access court records.

The Kansas Supreme Court has already acted to limit disclosure of personally identifiable information in court records. Included with this testimony is a copy of Supreme Court Rule 123, which establishes a privacy policy regarding personal identifiers in court records. Confidential information, including social security numbers, is supplied via a cover sheet that is not retained in the case file and is destroyed after the information is entered into the case management system. The rule also instructs parties to exclude – or to partially redact when inclusion is necessary – personal identifiers from all documents filed with the court. The rule warns that the party and the party's attorney are solely responsible for redacting personal identifiers. Court clerks do not review documents for compliance with the rule. Also of note is Supreme Court Rule 196, which governs public access to and confidentiality of electronic case records, and Supreme Court Rule 106(d), which protects sensitive personal information in marriage licensing documents.

If applied to courts, HB 2700 would conflict with Supreme Court Rule 123 inasmuch as court staff would be required to review each page of a court file and redact any partial or full social security numbers from the document before it is provided to the public. This review must be done within the three-day response timeframe mandated by the Kansas Open Records Act. The Office of Judicial Administration estimates that implementation of the bill would require 10 new Trial Court Clerk II positions across the state, which is a conservative estimate that assumes some work can be absorbed by existing staff.

In addition to the aforementioned staffing burdens, HB 2700 could greatly change the manner in which members of the public and business community access court records. Most counties now have a public access terminal in the court that allows members of the public to review certain court files electronically. These public access terminals save court staff a tremendous amount of time in fulfilling records requests and helping members of the public find the information they need. Under HB 2700, courts would likely have to shut down these access terminals and require that all persons requesting a court record do so through the clerk so the document can undergo the necessary review, at least on a temporary basis. If public access terminals are maintained, court staff would need to review a backlog of tens of millions of documents and proactively redact them so they can remain available through the public access terminals. During this period, additional clerks would be needed to assist those individuals who would normally use the public access terminals. The Office of Judicial Administration estimates that review of these documents and the additional assistance of individuals who would normally use the public access terminals would require the addition of 30 Trial Court Clerk II positions on a temporary basis for approximately one year.

Note too that in some counties it is common practice for abstractors, genealogists, and other professionals to review a large number of court records from a specific time span, or from a particular case type, during a single visit to the courthouse. HB 2700 would change the way in which these professionals do their work because, absent mass review and redaction of historical court documents, they could no longer be granted immediate access to those files. Instead, a clerk would need to review each page of the file before it could be provided for inspection or copying purposes.

The Kansas Supreme Court takes the protection of personally identifiable information in court records seriously, as is evidenced by the rules cited above. There is a delicate balance that must be struck between protecting that information, providing records to the public, and efficiently using increasingly limited court resources – including staff time. While the Judicial Branch always strives to improve its records access procedures, we believe this balance has already been struck through applicable court rules and practices.

I appreciate your consideration of the attached amendment to HB 2700 and am happy to stand for any questions you may have.

HOUSE BILL No. 2700

By Representative Esau

2-7

1 AN ACT concerning public records; regarding disclosure of personal
2 information; social security numbers; amending K.S.A. 2017 Supp. 75-
3 3520 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 75-3520 is hereby amended to read as
7 follows: 75-3520. (a) (1) Unless required by federal law, no document
8 available for public inspection or copying shall contain an individual's
9 social security number if such document contains such individual's
10 personal information. "Personal information" shall include, but not be
11 limited to, name, address, phone number or e-mail address.

and (3)

12 (2) The provisions of paragraph (1) ~~of~~ this subsection shall not apply
13 to documents recorded in the official records of any recorder of deeds of
14 the county or to any documents filed in the official records of the court and
15 shall be included, but not limited to, such documents of any records that
16 when filed constitutes:

- 17 ~~(1)~~(A) A consensual or nonconsensual lien;
- 18 ~~(2)~~(B) an eviction record;
- 19 ~~(3)~~(C) a judgment;
- 20 ~~(4)~~(D) a conviction or arrest;
- 21 ~~(5)~~(E) a bankruptcy;
- 22 ~~(6)~~(F) a secretary of state filing; or
- 23 ~~(7)~~(G) a professional license.

24 (3) *Any document or record that contains all or any portion of an*
25 *individual's social security number shall have all portions of all social*
26 *security numbers redacted before the document or record is made*
27 *available for public inspection or copying.*

28 (b) (1) No person, including an individual, firm, corporation,
29 association, partnership, joint venture or other business entity, or any
30 employee or agent therefor, shall solicit, require or use for commercial
31 purposes an individual's social security number unless such number is
32 necessary for such person's normal course of business and there is a
33 specific use for such number for which no other identifying number may
34 be used.

35 (2) Paragraph (1) of this subsection does not apply to documents or
36 records that are recorded or required to be open to the public pursuant to

1 state or federal law, or by court rule or order, and this paragraph does not
2 limit access to these documents or records.

3 (3) Paragraph (1) of this subsection does not apply to the collection,
4 use or release of social security numbers for the following purposes:

5 (A) Mailing of documents that include social security numbers sent
6 as part of an application or enrollment process or to establish, amend or
7 terminate an account, contract or policy or to confirm the accuracy of the
8 social security number;

9 (B) internal verification or administrative purposes;

10 (C) investigate or prevent fraud, conduct background checks, conduct
11 social or scientific research, collect a debt, obtain a credit report from or
12 furnish data to a consumer reporting agency pursuant to the fair credit
13 reporting act, 15 U.S.C. § 1681 et seq., undertake a permissible purpose
14 enumerated under the Gramm-Leach Bliley Act, 15 U.S.C. § 6802 (e), or
15 locate an individual who is missing, a lost relative, or due a benefit, such
16 as pension, insurance or unclaimed property benefit; or

17 (D) otherwise required by state or federal law or regulation.

18 (c) An individual who is aggrieved by a violation of this section may
19 recover a civil penalty of not more than \$1,000 for each violation.

20 Sec. 2. K.S.A. 2017 Supp. 75-3520 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.

Rule 123

COVER SHEET; PRIVACY POLICY REGARDING PERSONAL IDENTIFIERS

- (a) **Cover Sheet Required.** A party that files a case must submit a cover sheet with the initial pleading or complete the information required for electronically filing a new case. The judicial administrator may exclude categories of cases from this requirement. The cover sheet must be in substantial compliance with the forms located on the judicial council website. The following rules apply:
- (1) **Cover Sheet Handling.** The cover sheet:
 - (A) must not be retained in the case file;
 - (B) is not subject to Rule 108; and
 - (C) may be shredded or otherwise destroyed within a reasonable time after the case is entered into the case information system.
 - (2) **Confidential Information.** Social security numbers and birth dates supplied on a cover sheet or for electronic filing are confidential and may not be disclosed to the public.
 - (3) **Divorce, Child Custody, Child Support, and Maintenance Cases.** In an action for divorce, child custody, child support, or maintenance, the cover sheet or electronic filing information must include, if known, social security numbers and birth dates for the parties and the parties' children.
- (b) **Exclusion of Personal Identifiers from Documents.** Unless otherwise required by law or court order, parties and their attorneys must not include—or must partially redact when inclusion is necessary—the following personal identifiers from all documents and accompanying exhibits filed with the court:
- (1) **Social Security Number.** If an individual's social security number must be included in a pleading, only the last four digits should be used.
 - (2) **Birth Date.** If an individual's birth date must be included in a pleading, only the year should be used.
 - (3) **Financial Account Number.** If a financial account number is relevant, only the last four digits of the number should be used.

- (c) **Clerk Does Not Review Document for Personal Identifiers.** A party and the party's attorney are solely responsible for redacting personal identifiers. The clerk will not review a document for compliance with this rule.

[History: New rule effective July 1, 2005; Am. (e) effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. (a) and (b) effective November 18, 2016.]