



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 801 (as introduced 3-19-24)
Sponsor: Senator Rosemary Bayer
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 5-7-24

INTRODUCTION

The bill would prescribe a process to seal and expunge certain eviction records, such as evictions for nonpayment of rent or other terminations. Courts could seal the records during proceedings provided that the sealing did not conflict with public interest. Following a judgment, records could be sealed if receipt of rent were through emergency rental services, upon agreement by involved parties, or if the judgment were for nonpayment of rent below \$900, among other reasons. The bill would allow sealed records to be released for certain research purposes subject to the protection of personally identifiable information.

The bill also would allow a prospective tenant to pursue legal action against a housing provider that used sealed records to deny a rental application or subject the application to unfair terms or conditions. Additionally, records would be automatically expunged two years after a final judgment for possession.

BRIEF FISCAL IMPACT

The bill would add minor, indeterminate costs for local district courts due to increased and new administrative processes. The bill could also add to civil filings to a small degree. These costs are expected to be absorbed by local district courts.

Proposed MCL 600.5755

Legislative Analyst: Eleni Lionas
Fiscal Analyst: Michael Siracuse

CONTENT

The bill would amend Chapter 57 (Summary Proceedings to Recover Possession of Premises) of the Revised Judicature Act to do the following:

- Allow a court to seal eviction records under certain conditions.**
- Require a court to automatically expunge eviction records two years after a judgement entered into summary proceedings were final.**
- Allow a court to release sealed records for certain purposes if personally identifying information were redacted, unless the court granted the disclosure of the information under specific circumstances.**
- Allow a prospective tenant to bring a civil action against a housing provider that based an adverse action on a sealed court record.**

Under the bill, in summary proceedings under Chapter 57 or Chapter 57a, the latter of which generally prescribes the rights to terminate a tenancy in mobile home parks, the court could order that the records of the summary proceedings be sealed if the court determined that placing the records under seal was clearly in the interests of justice, and that those interests were not outweighed by the public's interest in knowing about the records. On the commencement of summary proceedings under Chapter 57 or Chapter 57a, the court would have to order the court records to be sealed until a judgment for possession was entered for the plaintiff.

"Records" would include any information contained in the case history or the case file, including the register of actions, pleadings, orders, and other papers.

After a judgment for possession was entered for the plaintiff in summary proceedings, on motion of a defendant or on the court's own motion, the court could order that the records of the summary proceeding be sealed if at least one of the following applied:

- The plaintiff received money to pay a judgment entered in the summary proceedings from the State, the Federal government, or a unit of local government for emergency rental assistance.
- The summary proceedings were filed under Section 5714(1)(a), 5714(1)(c), or 5714(1)(g) during the state of emergency declared under Executive Order No. 2020-4 or any extension of that Order, including an order issued under Section 2253 of the Public Health Code.
- The parties to the summary proceedings had agreed that the records be sealed.
- The defendant fulfilled the terms of the judgment.
- The judgment for possession was for nonpayment of rent for a total amount under \$900.

(Generally, Sections 5714(1)(a), 5714(1)(c), and 5714(1)(g) allow a person entitled to possession of a premises to recover the possession by summary proceedings for a failure to pay rent, following the termination of a lease, or when a person continues possession of a sold property. Executive Order No. 2020-4 declared a state of emergency for the COVID-19 Pandemic, and Section 2253 of the Public Health Code governs certain controls in the case of an epidemic.)

The bill would specify that money received for emergency rental assistance would not apply to money received under a program implemented by or under Federal low-income housing assistance, including the tenant-based Section 8 housing choice voucher and the project-based Section 8 Program.

Additionally, the records could be sealed if the premises were sold after the foreclosure of a mortgage or land contract, or if the premises were subject to a land contract forfeiture judgment, and the tenancy was terminated because the defendant continued in possession of the premises after the time allowed by law for redemption of the premises and either of the following applied:

- The defendant vacated the premises before the written summary proceedings were filed.
- The defendant did not receive a written demand for possession 90 days before the summary proceedings were filed, if the premises were sold under foreclosure of a mortgage or land contract, or 30 days before the filing, if the premises were subject to a land contract forfeiture judgment under Chapter 57.

The court would have to automatically expunge records of summary proceedings under Chapter 57 or chapter 57a two years after a judgment for possession entered in the summary proceedings became final.

The court could release sealed records for scholarly, educational, journalistic, or governmental purposes on a balancing of the interests of the tenant for nondisclosure against the interests of the requesting party; however, the tenant's name could not be disclosed, and other personally identifiable information about the tenant, such as the tenant's address, could not be disclosed unless all the following applied:

- The researcher submitted a written request to the court.
- The court approved and the researcher executed a written data use agreement that described the research project and that complied with the requirements for the release of personally identifiable information described below.
- The court was provided documented procedures of the researcher to protect the confidentiality and security of the information.
- The court was provided documented procedures of the researcher for data storage and the data destruction method to be used for the information provided.

On receipt of a request and proof of identity, the court would have to provide copies of any sealed records described above to at least one of the following, at the court or by an electronic means designated by the court, without an order unsealing the records and without a showing of need:

- A party to the summary proceedings.
- The attorney of record for a party.
- An attorney authorized to practice law in the State who was considering commencing representation of a party, if the attorney certified to the court's satisfaction that the party had requested the consideration of representation and had authorized the attorney's access to the sealed records.

An agreement under which personally identifiable information contained in a court record was disclosed would have to do all the following:

- Comply with Michigan court rules.
- Prohibit the re-release of any personally identifiable information without explicit permission from the court.
- Require that the information be used solely for research or administrative purposes.
- Require that the information be used only for the project described in the agreement unless the recipient submitted a written request with the description of another research project for which the information would be used, and the court approved the request.

- Prohibit the use of the information as a basis for legal, administrative, or other action that directly affected any individual or institution identifiable from the information.
- State the payment, if any, to be provided by the researcher to the court for the specified research project.
- Require that ownership of information provided under the agreement would remain with the court, not the researcher or the research project.

If a housing provider intentionally based an adverse action taken against a prospective tenant on a court record that the housing provider knew to be sealed, the prospective tenant could bring a civil action within one year of the adverse action. A prospective tenant who prevailed in an action would be entitled to all the following relief:

- Actual damages or \$500, whichever was greater.
- Reasonable attorney fees and costs.
- Equitable relief as the court determined was appropriate.

"Adverse action" would mean denial of the prospective tenant's rental application or approval of the prospective tenant's rental application subject to terms or conditions different and less favorable to the prospective tenant than under an ordinary approval of a prospective tenant's rental application.

FISCAL IMPACT

The bill would add administrative costs for district courts to implement a process for the sealing of summary proceedings records. Summary proceedings are expedited civil proceedings initiated to terminate possessory interests in property for nonpayment of rent or land contract payments. The number of summary proceedings filings for district courts can vary, often dependent upon the number of rental properties within a district court's jurisdiction. For example, in 2019, there were over 30,000 summary proceedings filings in Detroit's 36th District Court, but only 60 for that same year in Houghton County's 96th District Court. There were nearly 200,000 dispositions in summary proceedings cases statewide in 2023.

Although the sealing of records for any particular civil dispute would not create any great expense for a district court, the review of cases and/or records requests under the proposed language of the bill would be likely to take time, particularly for those district courts with a large volume of summary proceedings dispositions. No appropriations are included in the bill to accommodate these new administrative procedures, and any related costs would likely be absorbed by district courts.

The bill also would create a cause of action for prospective tenants for adverse actions taken against them by housing providers who based such actions on sealed court records. Any such filings would likely to be few because they would be hard to prove; however, such civil filings would create a nominal amount of court fee revenue for district courts.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.