



Sen. Jacqueline Y. Collins

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10100SB3158sam001

LRB101 19850 LNS 70626 a

1 AMENDMENT TO SENATE BILL 3158

2 AMENDMENT NO. _____. Amend Senate Bill 3158 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Sections 9-121 and 15-1701 and by adding Section 9-122
6 as follows:

7 (735 ILCS 5/9-121)

8 Sec. 9-121. Sealing of court file.

9 (a) The plaintiff shall attach an affidavit to the
10 complaint in an eviction action. The affidavit shall be
11 verified by the plaintiff and specify whether the court file
12 qualifies for mandatory sealing under paragraph (5), (6), (7),
13 or (8) of subsection (c) and whether the court file is exempt
14 from sealing under subsection (f). If the plaintiff identifies
15 the court file as not qualifying for mandatory sealing or as
16 exempt from sealing, the affidavit shall include a statement

1 that sets forth the reasoning and basis therefor.

2 If the plaintiff fails to comply with this subsection, the
3 court shall order the sealing of the court file.

4 Nothing in this subsection imposes a duty upon the clerk of
5 the circuit court to inspect an eviction action complaint for
6 compliance with this subsection. ~~Definition. As used in this~~
7 ~~Section, "court file" means the court file created when an~~
8 ~~eviction action is filed with the court.~~

9 (b) ~~Discretionary sealing of court file.~~ The court may, on
10 its own motion or that of any party, order the sealing of that
11 a court file in an eviction action, regardless of the final
12 disposition of the action, ~~be placed under seal~~ if the court
13 finds that:

14 (1) the plaintiff's action is sufficiently without a
15 basis in fact or law, which may include a lack of
16 jurisdiction;

17 (2) the defendant has a prima facie defense to the
18 eviction action;

19 (3) the defendant is eligible for the benefits granted
20 to a service member under Section 9-107.10;

21 (4) the defendant has established the grounds required
22 to deny the plaintiff's motion to extend the period of
23 enforcement for an eviction order under Section 9-117; or

24 (5) grounds exist that otherwise demonstrate that the
25 interests of justice in sealing the court file outweigh the
26 interests of the public in maintaining a public record of

1 the case after considering the following:

2 (i) whether the sealing of the court file is
3 disputed by the plaintiff, and if so, the adverse
4 effects on the plaintiff if the court file is sealed;

5 (ii) the adverse effects on the defendant if the
6 court file is accessible to the public;

7 (iii) any mitigating evidence concerning the basis
8 for or disposition of the eviction action presented by
9 the defendant, including whether the defendant had any
10 defenses to the action or whether the tenancy was
11 reinstated after disposition of the action; and

12 (iv) any evidence presented by the parties
13 relevant to the court in balancing the interests of
14 justice against the interests of the public in
15 accordance with this paragraph ~~, that placing the court~~
16 ~~file under seal is clearly in the interests of justice,~~
17 ~~and that those interests are not outweighed by the~~
18 ~~public's interest in knowing about the record.~~

19 (c) ~~Mandatory sealing of court file.~~ The court shall order
20 the sealing of the court file in an eviction action:

21 (1) upon dismissal of the plaintiff's claim for
22 possession;

23 (2) upon entry of a written agreement by the parties to
24 seal the court file;

25 (3) upon motion, if the court finds that the defendant
26 in any eviction action maintained pursuant to Section 9-209

1 has fully satisfied the judgment for rent, or that the
2 financial obligation owed to the plaintiff has been
3 discharged or paid under Chapter 7 or 13 of Title 11 of the
4 United States Code;

5 (4) if more than 3 years have elapsed since the filing
6 of the eviction action, regardless of the disposition of
7 the action;

8 (5) if the eviction action is maintained under Section
9 9-213 or pursuant to a predicate notice or demand for
10 possession under Section 9-205, 9-207, or 9-207.5;

11 (6) if the plaintiff seeks to evict a tenant, lessee,
12 or occupant as set forth in paragraph (6) of subsection (h)
13 of Section 15-1701;

14 (7) if the eviction action is maintained under
15 paragraph (7) of subsection (a) of Section 9-102 against a
16 tenant, lessee, or occupant in accordance with subsection
17 (a-5) of Section 9-104.2, or if the lessor or owner of the
18 condominium unit failed to comply with the leasing
19 requirements under subsection (n) of Section 18 of the
20 Condominium Property Act or by the declaration, bylaws,
21 rules, or regulations of the condominium in accordance with
22 subsection (c-5) of Section 9-104.2; or

23 (8) if the complaint or the predicate notice or demand
24 for possession upon which the plaintiff's action is based
25 does not allege, or the court does not find, that the
26 tenant or occupant materially breached the lease, or, if

1 the property the plaintiff seeks possession of is subject
2 to the Condominium Property Act, any violation by the
3 tenant, occupant, or lessee of the covenants, rules,
4 regulations, or bylaws of the condominium.

5 (d) For all eviction actions filed after the effective date
6 of this amendatory Act of the 101st General Assembly in which
7 the court has not entered an order that exempts the court file
8 from sealing under subsection (f), the court shall
9 automatically order, on or before January 1 and July 1 of each
10 year, the sealing of all court files in accordance with
11 paragraph (4) of subsection (c). Nothing in this subsection
12 prevents the defendant in an eviction action filed prior to the
13 effective date of this amendatory Act of the 101st General
14 Assembly from filing a motion to seal his or her court file
15 pursuant to subsection (b) or (c).

16 (e) At the earliest upon filing the complaint and no later
17 than the return court date on the original summons issued with
18 the complaint that commenced the action, the court shall
19 examine the complaint, the affidavit attached pursuant to
20 subsection (a), all matters apparent from the papers on file in
21 the case, and any testimony or evidence offered by the
22 defendant, and make a determination whether the court file is
23 exempt from sealing under this Section, and if not, whether the
24 court file qualifies for mandatory sealing under paragraph (5),
25 (6), (7), or (8) of subsection (c).

26 The court shall enter an order that plainly states its

1 determinations and its reasoning therefor.

2 Except as provided in subsection (f), the defendant in any
3 eviction action, including an action filed before the effective
4 date of this amendatory Act of the 101st General Assembly, may
5 move to seal the court file, notwithstanding any waiver of the
6 right to seal contained in any lease, contract, or other
7 agreement.

8 The court shall grant the defendant's motion to seal if the
9 plaintiff fails to timely respond to a written motion to seal
10 or fails to appear at the time and date set for hearing of the
11 motion to seal.

12 Upon determining that a court file qualifies for sealing
13 under subsection (b) or (c), the court shall enter a separate
14 order to seal the court file.

15 No finding of any issue of fact or law in connection with
16 the sealing of the court file is a determination of the merits
17 of the case or any aspect thereof. Neither the determination
18 made by the court under this subsection nor any evidence
19 offered by the parties in connection with the determination
20 precludes the defendant from making any motion or defense that
21 he or she might otherwise have made.

22 (f) A court file shall not be sealed under this Section if
23 it pertains to an eviction action: (i) that is not a
24 residential eviction action; or (ii) in which the property the
25 plaintiff seeks possession of is subject to the Condominium
26 Property Act and no tenant or occupant is named as a defendant

1 in the action.

2 (g) Upon motion and order of the court, a court file sealed
3 under this Section may be made accessible for scholarly,
4 educational, journalistic, or governmental purposes only,
5 balancing the interests of the parties and the public in
6 nondisclosure with the interests of the requesting party.
7 Identifying information of the parties shall remain sealed
8 unless the court orders that release of such information is
9 necessary to fulfill the purpose of the request. Nothing in
10 this subsection shall permit the release of a sealed court file
11 or the information contained therein for a commercial purpose
12 file relating to an eviction action brought against a tenant
13 under Section 9-207.5 of this Code or as set forth in
14 subdivision (h)(6) of Section 15-1701 of this Code shall be
15 placed under seal.

16 (Source: P.A. 100-173, eff. 1-1-18.)

17 (735 ILCS 5/9-122 new)

18 Sec. 9-122. Dissemination and use of information contained
19 in a sealed court file.

20 (a) As used in this Section:

21 "Consumer report" has the meaning provided in Section 603
22 of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

23 "Consumer reporting agency" has the meaning provided in
24 Section 603 of the Fair Credit Reporting Act, 15 U.S.C.
25 1681a(f).

1 "Dissemination" or "disseminate" means to publish,
2 produce, print, manufacture, copy, distribute, sell, lease,
3 exhibit, broadcast, display, transmit, or otherwise share
4 information in any format so as to make the information
5 accessible to others.

6 "Eviction record" means information in electronic or
7 physical form consisting of identifiable descriptions and
8 notations of notices, complaints, summons, motions, judgments,
9 or any other court document that relates to an eviction action.

10 (b) If a person knows or has reasonable cause to know that
11 the information is derived from a sealed eviction record, he or
12 she shall not disseminate any information contained in a sealed
13 eviction record.

14 (c) A consumer reporting agency, including a tenant
15 background screening service, shall not disseminate an
16 eviction record or information derived from an eviction record
17 that pertains to an eviction action in which the court has not
18 entered a final order or judgment in the action, or is sealed
19 or impounded under Section 9-121 or otherwise made confidential
20 by the court, or use such an action as a factor to determine
21 any score, evaluation, or recommendation to be included in a
22 consumer report pertaining to a defendant named in the action.
23 A consumer reporting agency may include in a consumer report
24 information found in a publicly available court file if: (i)
25 the consumer's full name, date of birth, social security
26 number, and both the basis and final disposition for any

1 eviction action reported are included in the report; (ii) the
2 consumer is permitted to include a 100-word statement about any
3 court file included in any way in the report; and (iii) the
4 information is removed from the report and from the calculation
5 of any score or recommendation therein within 7 days of the
6 sealing of the court file from which it is derived.

7 Any violation of this subsection is an unlawful practice
8 under the Consumer Fraud and Deceptive Business Practices Act.

9 (d) Any person who violates this Section is liable to the
10 defendant named in the eviction action for \$2,000 for each
11 violation or twice the actual and consequential damages
12 sustained, whichever is greater, and the costs of the action,
13 including reasonable attorney's fees.

14 (e) This Section does not apply to a defendant who is the
15 subject of the eviction record, his or her counsel, the court,
16 the clerk of the circuit court, or the sheriff.

17 (f) Any waiver of the provisions of this Section is
18 contrary to public policy and is void and unenforceable.
19 Nothing in this Section shall be deemed to waive the rights or
20 remedies of any consumer under any law, rule, or regulation.

21 (g) Nothing in this Section prohibits the dissemination of
22 information regarding a judgment for rent for the sole purpose
23 of enforcing such a judgment pursuant to Article XII.

24 (h) Nothing in this Section prohibits the provision of the
25 eviction order to a sheriff for the sole purpose of enforcement
26 of the order.

1 (i) If any provision of this Section or its application to
2 any person or circumstance is held invalid, the invalidity of
3 that provision or application does not affect other provisions
4 or applications of this Section that can be given effect
5 without the invalid provision or application.

6 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

7 Sec. 15-1701. Right to possession.

8 (a) General. The provisions of this Article shall govern
9 the right to possession of the mortgaged real estate during
10 foreclosure. Possession under this Article includes physical
11 possession of the mortgaged real estate to the same extent to
12 which the mortgagor, absent the foreclosure, would have been
13 entitled to physical possession. For the purposes of Part 17,
14 real estate is residential real estate only if it is
15 residential real estate at the time the foreclosure is
16 commenced.

17 (b) Pre-Judgment. Prior to the entry of a judgment of
18 foreclosure:

19 (1) In the case of residential real estate, the
20 mortgagor shall be entitled to possession of the real
21 estate except if (i) the mortgagee shall object and show
22 good cause, (ii) the mortgagee is so authorized by the
23 terms of the mortgage or other written instrument, and
24 (iii) the court is satisfied that there is a reasonable
25 probability that the mortgagee will prevail on a final

1 hearing of the cause, the court shall upon request place
2 the mortgagee in possession. If the residential real estate
3 consists of more than one dwelling unit, then for the
4 purpose of this Part residential real estate shall mean
5 only that dwelling unit or units occupied by persons
6 described in clauses (i), (ii) and (iii) of Section
7 15-1219.

8 (2) In all other cases, if (i) the mortgagee is so
9 authorized by the terms of the mortgage or other written
10 instrument, and (ii) the court is satisfied that there is a
11 reasonable probability that the mortgagee will prevail on a
12 final hearing of the cause, the mortgagee shall upon
13 request be placed in possession of the real estate, except
14 that if the mortgagor shall object and show good cause, the
15 court shall allow the mortgagor to remain in possession.

16 (c) Judgment Through 30 Days After Sale Confirmation. After
17 the entry of a judgment of foreclosure and through the 30th day
18 after a foreclosure sale is confirmed:

19 (1) Subsection (b) of Section 15-1701 shall be
20 applicable, regardless of the provisions of the mortgage or
21 other instrument, except that after a sale pursuant to the
22 judgment the holder of the certificate of sale (or, if
23 none, the purchaser at the sale) shall have the mortgagee's
24 right to be placed in possession, with all rights and
25 duties of a mortgagee in possession under this Article.

26 (2) Notwithstanding paragraph (1) of subsection (b)

1 and paragraph (1) of subsection (c) of Section 15-1701,
2 upon request of the mortgagee, a mortgagor of residential
3 real estate shall not be allowed to remain in possession
4 between the expiration of the redemption period and through
5 the 30th day after sale confirmation unless (i) the
6 mortgagor pays to the mortgagee or such holder or
7 purchaser, whichever is applicable, monthly the lesser of
8 the interest due under the mortgage calculated at the
9 mortgage rate of interest applicable as if no default had
10 occurred or the fair rental value of the real estate, or
11 (ii) the mortgagor otherwise shows good cause. Any amounts
12 paid by the mortgagor pursuant to this subsection shall be
13 credited against the amounts due from the mortgagor.

14 (d) After 30 Days After Sale Confirmation. The holder of
15 the certificate of sale or deed issued pursuant to that
16 certificate or, if no certificate or deed was issued, the
17 purchaser, except to the extent the holder or purchaser may
18 consent otherwise, shall be entitled to possession of the
19 mortgaged real estate, as of the date 30 days after the order
20 confirming the sale is entered, against those parties to the
21 foreclosure whose interests the court has ordered terminated,
22 without further notice to any party, further order of the
23 court, or resort to proceedings under any other statute other
24 than this Article. This right to possession shall be limited by
25 the provisions governing entering and enforcing orders of
26 possession under subsection (g) of Section 15-1508. If the

1 holder or purchaser determines that there are occupants of the
2 mortgaged real estate who have not been made parties to the
3 foreclosure and had their interests terminated therein, the
4 holder or purchaser may bring an eviction proceeding under
5 subsection (h) of this Section, if applicable, or under Article
6 IX of this Code to terminate the rights of possession of any
7 such occupants. The holder or purchaser shall not be entitled
8 to proceed against any such occupant under Article IX of this
9 Code until after 30 days after the order confirming the sale is
10 entered.

11 (e) Termination of Leases. A lease of all or any part of
12 the mortgaged real estate shall not be terminated automatically
13 solely by virtue of the entry into possession by (i) a
14 mortgagee or receiver prior to the entry of an order confirming
15 the sale, (ii) the holder of the certificate of sale, (iii) the
16 holder of the deed issued pursuant to that certificate, or (iv)
17 if no certificate or deed was issued, the purchaser at the
18 sale.

19 (f) Other Statutes; Instruments. The provisions of this
20 Article providing for possession of mortgaged real estate shall
21 supersede any other inconsistent statutory provisions. In
22 particular, and without limitation, whenever a receiver is
23 sought to be appointed in any action in which a foreclosure is
24 also pending, a receiver shall be appointed only in accordance
25 with this Article. Except as may be authorized by this Article,
26 no mortgage or other instrument may modify or supersede the

1 provisions of this Article.

2 (g) Certain Leases. Leases of the mortgaged real estate
3 entered into by a mortgagee in possession or a receiver and
4 approved by the court in a foreclosure shall be binding on all
5 parties, including the mortgagor after redemption, the
6 purchaser at a sale pursuant to a judgment of foreclosure and
7 any person acquiring an interest in the mortgaged real estate
8 after entry of a judgment of foreclosure in accordance with
9 Sections 15-1402 and 15-1403.

10 (h) Proceedings Against Certain Occupants.

11 (1) The mortgagee-in-possession of the mortgaged real
12 estate under Section 15-1703, a receiver appointed under
13 Section 15-1704, a holder of the certificate of sale or
14 deed, or the purchaser may, at any time during the pendency
15 of the foreclosure and up to 90 days after the date of the
16 order confirming the sale, file a supplemental eviction
17 petition against a person not personally named as a party
18 to the foreclosure. This subsection (h) does not apply to
19 any lessee with a bona fide lease of a dwelling unit in
20 residential real estate in foreclosure.

21 (2) The supplemental eviction petition shall name each
22 such occupant against whom an eviction order is sought and
23 state the facts upon which the claim for relief is
24 premised.

25 (3) The petitioner shall serve upon each named occupant
26 the petition, a notice of hearing on the petition, and, if

1 any, a copy of the certificate of sale or deed. The
2 eviction proceeding, including service of the notice of the
3 hearing and the petition, shall in all respects comport
4 with the requirements of Article IX of this Code, except as
5 otherwise specified in this Section. The hearing shall be
6 no less than 21 days from the date of service of the
7 notice.

8 (4) The supplemental petition shall be heard as part of
9 the foreclosure proceeding and without the payment of
10 additional filing fees. An eviction order obtained under
11 this Section shall name each occupant whose interest has
12 been terminated, shall recite that it is only effective as
13 to the occupant so named and those holding under them, and
14 shall be enforceable for no more than 120 days after its
15 entry, except that the 120-day period may be extended to
16 the extent and in the manner provided in Section 9-117 of
17 Article IX and except as provided in item (5) of this
18 subsection (h).

19 (5) In a case of foreclosure where the occupant is
20 current on his or her rent, or where timely written notice
21 of to whom and where the rent is to be paid has not been
22 provided to the occupant, or where the occupant has made
23 good-faith efforts to make rental payments in order to keep
24 current, any eviction order must allow the occupant to
25 retain possession of the property covered in his or her
26 rental agreement (i) for 120 days following the notice of

1 the hearing on the supplemental petition that has been
2 properly served upon the occupant, or (ii) through the
3 duration of his or her lease, whichever is shorter,
4 provided that if the duration of his or her lease is less
5 than 30 days from the date of the order, the order shall
6 allow the occupant to retain possession for 30 days from
7 the date of the order. A mortgagee in possession, receiver,
8 holder of a certificate of sale or deed, or purchaser at
9 the judicial sale, who asserts that the occupant is not
10 current in rent, shall file an affidavit to that effect in
11 the supplemental petition proceeding. If the occupant has
12 been given timely written notice of to whom and where the
13 rent is to be paid, this item (5) shall only apply if the
14 occupant continues to pay his or her rent in full during
15 the 120-day period or has made good-faith efforts to pay
16 the rent in full during that period.

17 (6) The court records relating to a supplemental
18 eviction petition filed under this subsection (h) against
19 an occupant who is entitled to notice under item (5) of
20 this subsection (h), or relating to an eviction action
21 brought against an occupant who would have lawful
22 possession of the premises but for the foreclosure of a
23 mortgage on the property, or relating to a foreclosure
24 action in which a tenant or occupant is named as a
25 defendant in the foreclosure action, shall be ordered
26 sealed and shall not be disclosed to any person, other than

1 a law enforcement officer or any other representative of a
2 governmental entity, except upon further order of the
3 court.

4 (i) Termination of bona fide leases. The holder of the
5 certificate of sale, the holder of the deed issued pursuant to
6 that certificate, or, if no certificate or deed was issued, the
7 purchaser at the sale shall not terminate a bona fide lease of
8 a dwelling unit in residential real estate in foreclosure
9 except pursuant to Article IX of this Code.

10 (Source: P.A. 100-173, eff. 1-1-18.)

11 Section 10. The Consumer Fraud and Deceptive Business
12 Practices Act is amended by changing Section 2Z as follows:

13 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

14 Sec. 2Z. Violations of other Acts. Any person who knowingly
15 violates the Automotive Repair Act, the Automotive Collision
16 Repair Act, the Home Repair and Remodeling Act, the Dance
17 Studio Act, the Physical Fitness Services Act, the Hearing
18 Instrument Consumer Protection Act, the Illinois Union Label
19 Act, the Installment Sales Contract Act, the Job Referral and
20 Job Listing Services Consumer Protection Act, the Travel
21 Promotion Consumer Protection Act, the Credit Services
22 Organizations Act, the Automatic Telephone Dialers Act, the
23 Pay-Per-Call Services Consumer Protection Act, the Telephone
24 Solicitations Act, the Illinois Funeral or Burial Funds Act,

1 the Cemetery Oversight Act, the Cemetery Care Act, the Safe and
2 Hygienic Bed Act, the Illinois Pre-Need Cemetery Sales Act, the
3 High Risk Home Loan Act, the Payday Loan Reform Act, the
4 Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
5 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
6 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
7 Internet Caller Identification Act, paragraph (6) of
8 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
9 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
10 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
11 Residential Real Property Disclosure Act, the Automatic
12 Contract Renewal Act, the Reverse Mortgage Act, Section 25 of
13 the Youth Mental Health Protection Act, the Personal
14 Information Protection Act, subsection (c) of Section 9-122 of
15 the Code of Civil Procedure, or the Student Online Personal
16 Protection Act commits an unlawful practice within the meaning
17 of this Act.

18 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642,
19 eff. 7-28-16; 100-315, eff. 8-24-17; 100-416, eff. 1-1-18;
20 100-863, eff. 8-14-18.)".