

## SENATE BILL No. 641

By Committee on Ways and Means

2-19

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9 AN ACT concerning the secretary of commerce; creating an outfitter  
10 license; prescribing requirements therefor; amending K.S.A. 21-4619  
11 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) As used in this section:

15 (1) "Guide" means an employee of a licensed outfitter who provides  
16 direct service to individuals hunting in the field.

17 (2) "Outfitter" means a licensed owner and operator of a hunting  
18 guide business who provides individuals guided, semi- guided or un-  
19 guided hunting opportunities for wildlife in Kansas.

20 (3) "Secretary" means the secretary of commerce.

21 (b) On an after January 1, 2009, a valid outfitter license is required  
22 to provide outfitter services in this state.

23 (c) A person who desires to provide outfitter services shall apply  
24 annually to the secretary for an outfitter license. The secretary may issue  
25 an outfitter license upon proper application and payment of an annual  
26 license fee as follows: (1) \$500 for Kansas residents; or (2) \$2,000 for  
27 nonresidents. Such licenses shall expire on December 31 of each year.

28 (d) The secretary shall conduct an annual on-site inspection of each  
29 licensed outfitter's business location. Such inspection shall verify that the  
30 licensed outfitter maintains the following:

31 (1) A certificate of liability insurance. The certificate of liability in-  
32 surance shall be executed by an insurance company authorized to do  
33 business in Kansas or by a licensed insurance agent operating under au-  
34 thority of K.S.A. 40-246b, and amendments thereto, and shall state the  
35 effective date and the expiration date of the policy. Such liability insur-  
36 ance shall be subject to the insurer's policy provisions filed with and ap-  
37 proved by the commissioner of insurance pursuant to K.S.A. 40-216, and  
38 amendments thereto, except as authorized by K.S.A. 40-246b, and  
39 amendments thereto. The liability insurance policy shall include, but not  
40 be limited to: (A) Coverage for not less than \$1,000,000 for personal injury  
41 liability for each occurrence, with a general aggregate limit of not less  
42 than \$3,000,000; and (B) coverage up to \$50,000 for property damage to  
43 rented premises. The certificate shall be executed on a form approved by

1 the secretary.

2 (2) A surety bond in an amount not less than \$25,000 per year. The  
3 bond shall be executed by a corporate surety and shall state the effective  
4 date and the expiration date. The surety bond shall be executed on a form  
5 approved by the secretary. The licensed outfitter shall be named as the  
6 principal in the bond. Such bond shall be to the state of Kansas and shall  
7 be conditioned upon compliance by the principal and by the principal's  
8 officers, agents, representatives and employees, with the provisions of this  
9 section.

10 (3) A current certification in first aid and cardiopulmonary resusci-  
11 tation (CPR).

12 (e) In addition to any other penalty prescribed by law, the secretary,  
13 in accordance with the Kansas administrative procedure act, may refuse  
14 to issue, suspend or revoke an outfitter license if the secretary finds that  
15 the applicant or licensee has:

16 (1) Failed to comply with the wildlife and parks laws of this state or  
17 rules and regulations adopted thereunder;

18 (2) been convicted of a violation of the fish, wildlife, boating or parks  
19 laws of another jurisdiction; or

20 (3) been convicted of a felony.

21 (f) The secretary upon request shall receive from the Kansas bureau  
22 of investigation such criminal history record information relating to ar-  
23 rests and criminal convictions as necessary for the purpose of determining  
24 initial and continuing qualifications of applicants for an outfitter license.

25 (g) In addition to any other penalty prescribed by law, the secretary,  
26 in accordance with the Kansas administrative procedure act, may fine a  
27 person for providing outfitter services in this state without a valid outfitter  
28 license as follows:

29 (1) For Kansas residents, \$1,000 for the first violation, \$2,000 for the  
30 second violation and \$10,000 plus loss of Kansas hunting license for life  
31 for the third violation and for each subsequent violation.

32 (2) For nonresidents, \$3,000 for the first violation, \$6,000 plus loss  
33 of Kansas hunting license for one year for the second violation and  
34 \$10,000 plus loss of Kansas hunting license privileges for life for the third  
35 violation and for each subsequent violation.

36 (h) All fines assessed and collected under this section shall be remit-  
37 ted to the state treasurer in accordance with the provisions of K.S.A. 75-  
38 4215, and amendments thereto. Upon receipt of each such remittance,  
39 the state treasurer shall deposit the entire amount in the state treasury  
40 to the credit of the state general fund.

41 (i) The secretary is hereby authorized to promulgate rules and reg-  
42 ulations necessary to implement and administer the provisions of this  
43 section.

1     Sec. 2. K.S.A. 21-4619 is hereby amended to read as follows: 21-  
2 4619. (a) (1) Except as provided in subsections (b) and (c), any person  
3 convicted in this state of a traffic infraction, cigarette or tobacco infrac-  
4 tion, misdemeanor or a class D or E felony, or for crimes committed on  
5 or after July 1, 1993, nondrug crimes ranked in severity levels 6 through  
6 10 or any felony ranked in severity level 4 of the drug grid, may petition  
7 the convicting court for the expungement of such conviction or related  
8 arrest records if three or more years have elapsed since the person: (A)  
9 Satisfied the sentence imposed; or (B) was discharged from probation, a  
10 community correctional services program, parole, postrelease supervi-  
11 sion, conditional release or a suspended sentence.

12     (2) Except as provided in subsections (b) and (c), any person who has  
13 fulfilled the terms of a diversion agreement may petition the district court  
14 for the expungement of such diversion agreement and related arrest re-  
15 cords if three or more years have elapsed since the terms of the diversion  
16 agreement were fulfilled.

17     (b) Except as provided in subsection (c), no person may petition for  
18 expungement until five or more years have elapsed since the person sat-  
19 isfied the sentence imposed, the terms of a diversion agreement or was  
20 discharged from probation, a community correctional services program,  
21 parole, postrelease supervision, conditional release or a suspended sen-  
22 tence, if such person was convicted of a class A, B or C felony, or for  
23 crimes committed on or after July 1, 1993, if convicted of an off-grid  
24 felony or any nondrug crime ranked in severity levels 1 through 5 or any  
25 felony ranked in severity levels 1 through 3 of the drug grid, or:

26     (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-  
27 ments thereto, or as prohibited by any law of another state which is in  
28 substantial conformity with that statute;

29     (2) driving while the privilege to operate a motor vehicle on the public  
30 highways of this state has been canceled, suspended or revoked, as pro-  
31 hibited by K.S.A. 8-262, and amendments thereto, or as prohibited by  
32 any law of another state which is in substantial conformity with that  
33 statute;

34     (3) perjury resulting from a violation of K.S.A. 8-261a, and amend-  
35 ments thereto, or resulting from the violation of a law of another state  
36 which is in substantial conformity with that statute;

37     (4) violating the provisions of the fifth clause of K.S.A. 8-142, and  
38 amendments thereto, relating to fraudulent applications or violating the  
39 provisions of a law of another state which is in substantial conformity with  
40 that statute;

41     (5) any crime punishable as a felony wherein a motor vehicle was  
42 used in the perpetration of such crime;

43     (6) failing to stop at the scene of an accident and perform the duties

1 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,  
2 or required by a law of another state which is in substantial conformity  
3 with those statutes;

4 (7) violating the provisions of K.S.A. 40-3104, and amendments  
5 thereto, relating to motor vehicle liability insurance coverage; or  
6 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

7 (c) There shall be no expungement of convictions for the following  
8 offenses or of convictions for an attempt to commit any of the following  
9 offenses: (1) Rape as defined in K.S.A. 21-3502, and amendments thereto;  
10 (2) indecent liberties with a child as defined in K.S.A. 21-3503, and  
11 amendments thereto; (3) aggravated indecent liberties with a child as  
12 defined in K.S.A. 21-3504, and amendments thereto; (4) criminal sodomy  
13 as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amend-  
14 ments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-  
15 3506, and amendments thereto; (6) indecent solicitation of a child as  
16 defined in K.S.A. 21-3510, and amendments thereto; (7) aggravated in-  
17 decent solicitation of a child as defined in K.S.A. 21-3511, and amend-  
18 ments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-  
19 3516, and amendments thereto; (9) aggravated incest as defined in K.S.A.  
20 21-3603, and amendments thereto; (10) endangering a child as defined  
21 in K.S.A. 21-3608, and amendments thereto; (11) abuse of a child as  
22 defined in K.S.A. 21-3609, and amendments thereto; (12) capital murder  
23 as defined in K.S.A. 21-3439, and amendments thereto; (13) murder in  
24 the first degree as defined in K.S.A. 21-3401, and amendments thereto;  
25 (14) murder in the second degree as defined in K.S.A. 21-3402, and  
26 amendments thereto; (15) voluntary manslaughter as defined in K.S.A.  
27 21-3403, and amendments thereto; (16) involuntary manslaughter as de-  
28 fined in K.S.A. 21-3404, and amendments thereto; (17) involuntary man-  
29 slaughter while driving under the influence of alcohol or drugs as defined  
30 in K.S.A. 21-3442, and amendments thereto; (18) sexual battery as de-  
31 fined in K.S.A. 21-3517, and amendments thereto, when the victim was  
32 less than 18 years of age at the time the crime was committed; (19) ag-  
33 gravated sexual battery as defined in K.S.A. 21-3518, and amendments  
34 thereto; (20) a violation of K.S.A. 8-1567, and amendments thereto, in-  
35 cluding any diversion for such violation; (21) a violation of K.S.A. 8-2,144,  
36 and amendments thereto, including any diversion for such violation; or  
37 (22) any conviction for any offense in effect at any time prior to the  
38 effective date of this act, that is comparable to any offense as provided in  
39 this subsection.

40 (d) When a petition for expungement is filed, the court shall set a  
41 date for a hearing of such petition and shall cause notice of such hearing  
42 to be given to the prosecuting attorney and the arresting law enforcement  
43 agency. The petition shall state: (1) The defendant's full name;

- 1 (2) the full name of the defendant at the time of arrest, conviction or  
2 diversion, if different than the defendant's current name;
- 3 (3) the defendant's sex, race and date of birth;
- 4 (4) the crime for which the defendant was arrested, convicted or  
5 diverted;
- 6 (5) the date of the defendant's arrest, conviction or diversion; and
- 7 (6) the identity of the convicting court, arresting law enforcement  
8 authority or diverting authority. There shall be no docket fee for filing a  
9 petition pursuant to this section. All petitions for expungement shall be  
10 docketed in the original criminal action. Any person who may have rel-  
11 evant information about the petitioner may testify at the hearing. The  
12 court may inquire into the background of the petitioner and shall have  
13 access to any reports or records relating to the petitioner that are on file  
14 with the secretary of corrections or the Kansas parole board.
- 15 (e) At the hearing on the petition, the court shall order the peti-  
16 tioner's arrest record, conviction or diversion expunged if the court finds  
17 that:
- 18 (1) The petitioner has not been convicted of a felony in the past two  
19 years and no proceeding involving any such crime is presently pending  
20 or being instituted against the petitioner;
- 21 (2) the circumstances and behavior of the petitioner warrant the  
22 expungement; and
- 23 (3) the expungement is consistent with the public welfare.
- 24 (f) When the court has ordered an arrest record, conviction or diver-  
25 sion expunged, the order of expungement shall state the information re-  
26 quired to be contained in the petition. The clerk of the court shall send  
27 a certified copy of the order of expungement to the Kansas bureau of  
28 investigation which shall notify the federal bureau of investigation, the  
29 secretary of corrections and any other criminal justice agency which may  
30 have a record of the arrest, conviction or diversion. After the order of  
31 expungement is entered, the petitioner shall be treated as not having been  
32 arrested, convicted or diverted of the crime, except that:
- 33 (1) Upon conviction for any subsequent crime, the conviction that  
34 was expunged may be considered as a prior conviction in determining the  
35 sentence to be imposed;
- 36 (2) the petitioner shall disclose that the arrest, conviction or diversion  
37 occurred if asked about previous arrests, convictions or diversions:
- 38 (A) In any application for licensure as a private detective, private  
39 detective agency, certification as a firearms trainer pursuant to K.S.A.  
40 2007 Supp. 75-7b21, and amendments thereto, or employment as a de-  
41 tective with a private detective agency, as defined by K.S.A. 75-7b01, and  
42 amendments thereto; as security personnel with a private patrol operator,  
43 as defined by K.S.A. 75-7b01, and amendments thereto; or with an insti-

- 1 tution, as defined in K.S.A. 76-12a01, and amendments thereto, of the  
2 department of social and rehabilitation services;
- 3 (B) in any application for admission, or for an order of reinstatement,  
4 to the practice of law in this state;
- 5 (C) to aid in determining the petitioner's qualifications for employ-  
6 ment with the Kansas lottery or for work in sensitive areas within the  
7 Kansas lottery as deemed appropriate by the executive director of the  
8 Kansas lottery;
- 9 (D) to aid in determining the petitioner's qualifications for executive  
10 director of the Kansas racing and gaming commission, for employment  
11 with the commission or for work in sensitive areas in parimutuel racing  
12 as deemed appropriate by the executive director of the commission, or  
13 to aid in determining qualifications for licensure or renewal of licensure  
14 by the commission;
- 15 (E) to aid in determining the petitioner's qualifications for the fol-  
16 lowing under the Kansas expanded lottery act: (i) Lottery gaming facility  
17 manager or prospective manager, racetrack gaming facility manager or  
18 prospective manager, licensee or certificate holder; or (ii) an officer, di-  
19 rector, employee, owner, agent or contractor thereof;
- 20 (F) upon application for a commercial driver's license under K.S.A.  
21 8-2,125 through 8-2,142, and amendments thereto;
- 22 (G) to aid in determining the petitioner's qualifications to be an em-  
23 ployee of the state gaming agency;
- 24 (H) to aid in determining the petitioner's qualifications to be an em-  
25 ployee of a tribal gaming commission or to hold a license issued pursuant  
26 to a tribal-state gaming compact;
- 27 (I) in any application for registration as a broker-dealer, agent, in-  
28 vestment adviser or investment adviser representative all as defined in  
29 K.S.A. 17-12a102, and amendments thereto; ~~or~~
- 30 (J) in any application for employment as a law enforcement officer as  
31 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; *or*
- 32 (K) *in any application for licensure as an outfitter pursuant to section*  
33 *1, and amendments thereto;*
- 34 (3) the court, in the order of expungement, may specify other cir-  
35 cumstances under which the conviction is to be disclosed;
- 36 (4) the conviction may be disclosed in a subsequent prosecution for  
37 an offense which requires as an element of such offense a prior conviction  
38 of the type expunged; and
- 39 (5) upon commitment to the custody of the secretary of corrections,  
40 any previously expunged record in the possession of the secretary of cor-  
41 rections may be reinstated and the expungement disregarded, and the  
42 record continued for the purpose of the new commitment.
- 43 (g) Whenever a person is convicted of a crime, pleads guilty and pays

1 a fine for a crime, is placed on parole, postrelease supervision or proba-  
2 tion, is assigned to a community correctional services program, is granted  
3 a suspended sentence or is released on conditional release, the person  
4 shall be informed of the ability to expunge the arrest records or convic-  
5 tion. Whenever a person enters into a diversion agreement, the person  
6 shall be informed of the ability to expunge the diversion.

7 (h) Subject to the disclosures required pursuant to subsection (f), in  
8 any application for employment, license or other civil right or privilege,  
9 or any appearance as a witness, a person whose arrest records, conviction  
10 or diversion of a crime has been expunged under this statute may state  
11 that such person has never been arrested, convicted or diverted of such  
12 crime, but the expungement of a felony conviction does not relieve an  
13 individual of complying with any state or federal law relating to the use  
14 or possession of firearms by persons convicted of a felony.

15 (i) Whenever the record of any arrest, conviction or diversion has  
16 been expunged under the provisions of this section or under the provi-  
17 sions of any other existing or former statute, the custodian of the records  
18 of arrest, conviction, diversion and incarceration relating to that crime  
19 shall not disclose the existence of such records, except when requested  
20 by:

- 21 (1) The person whose record was expunged;
- 22 (2) a private detective agency or a private patrol operator, and the  
23 request is accompanied by a statement that the request is being made in  
24 conjunction with an application for employment with such agency or op-  
25 erator by the person whose record has been expunged;
- 26 (3) a court, upon a showing of a subsequent conviction of the person  
27 whose record has been expunged;
- 28 (4) the secretary of social and rehabilitation services, or a designee of  
29 the secretary, for the purpose of obtaining information relating to em-  
30 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-  
31 ments thereto, of the department of social and rehabilitation services of  
32 any person whose record has been expunged;
- 33 (5) a person entitled to such information pursuant to the terms of the  
34 expungement order;
- 35 (6) a prosecuting attorney, and such request is accompanied by a  
36 statement that the request is being made in conjunction with a prosecu-  
37 tion of an offense that requires a prior conviction as one of the elements  
38 of such offense;
- 39 (7) the supreme court, the clerk or disciplinary administrator thereof,  
40 the state board for admission of attorneys or the state board for discipline  
41 of attorneys, and the request is accompanied by a statement that the  
42 request is being made in conjunction with an application for admission,  
43 or for an order of reinstatement, to the practice of law in this state by the

- 1 person whose record has been expunged;
- 2 (8) the Kansas lottery, and the request is accompanied by a statement  
3 that the request is being made to aid in determining qualifications for  
4 employment with the Kansas lottery or for work in sensitive areas within  
5 the Kansas lottery as deemed appropriate by the executive director of the  
6 Kansas lottery;
- 7 (9) the governor or the Kansas racing and gaming commission, or a  
8 designee of the commission, and the request is accompanied by a state-  
9 ment that the request is being made to aid in determining qualifications  
10 for executive director of the commission, for employment with the com-  
11 mission, for work in sensitive areas in parimutuel racing as deemed ap-  
12 propriate by the executive director of the commission or for licensure,  
13 renewal of licensure or continued licensure by the commission;
- 14 (10) the Kansas racing and gaming commission, or a designee of the  
15 commission, and the request is accompanied by a statement that the re-  
16 quest is being made to aid in determining qualifications of the following  
17 under the Kansas expanded lottery act: (A) Lottery gaming facility man-  
18 agers and prospective managers, racetrack gaming facility managers and  
19 prospective managers, licensees and certificate holders; and (B) their of-  
20 ficers, directors, employees, owners, agents and contractors;
- 21 (11) the Kansas sentencing commission;
- 22 (12) the state gaming agency, and the request is accompanied by a  
23 statement that the request is being made to aid in determining qualifi-  
24 cations: (A) To be an employee of the state gaming agency; or (B) to be  
25 an employee of a tribal gaming commission or to hold a license issued  
26 pursuant to a tribal-gaming compact;
- 27 (13) the Kansas securities commissioner or a designee of the com-  
28 missioner, and the request is accompanied by a statement that the request  
29 is being made in conjunction with an application for registration as a  
30 broker-dealer, agent, investment adviser or investment adviser represen-  
31 tative by such agency and the application was submitted by the person  
32 whose record has been expunged;
- 33 (14) the Kansas commission on peace officers' standards and training  
34 and the request is accompanied by a statement that the request is being  
35 made to aid in determining certification eligibility as a law enforcement  
36 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
- 37 (15) a law enforcement agency and the request is accompanied by a  
38 statement that the request is being made to aid in determining eligibility  
39 for employment as a law enforcement officer as defined by K.S.A. 22-  
40 2202, and amendments thereto; ~~or~~
- 41 (16) the attorney general and the request is accompanied by a state-  
42 ment that the request is being made to aid in determining qualifications  
43 for a license to carry a concealed weapon pursuant to the personal and

1 family protection act; or

2 *(17) the secretary of commerce and the request is accompanied by a*  
3 *statement that the request is being made to aid in determining qualifica-*  
4 *tions for licensure as an outfitter pursuant to section 1, and amendments*  
5 *thereto.*

6 Sec. 3. K.S.A. 21-4619 is hereby repealed.

7 Sec. 4. This act shall take effect and be in force from and after its  
8 publication in the Kansas register.