

HOUSE BILL No. 2519

By Committee on Insurance

1-24

1 AN ACT concerning expungement; relating to applications for insurance
2 agent license; amending K.S.A. 2011 Supp. 12-4516, 21-6614 and 22-
3 2410 and repealing the existing sections; also repealing K.S.A. 2011
4 Supp. 21-6614a, 21-6614b, 21-6614c and 22-2410a.
5

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

7 Section 1. K.S.A. 2011 Supp. 12-4516 is hereby amended to read as
8 follows: 12-4516. (a) (1) Except as provided in subsection (b), (c) and (d),
9 any person who has been convicted of a violation of a city ordinance of
10 this state may petition the convicting court for the expungement of such
11 conviction and related arrest records if three or more years have elapsed
12 since the person:

13 (A) Satisfied the sentence imposed; or

14 (B) was discharged from probation, parole or a suspended sentence.

15 (2) Except as provided in subsection (b), (c) and (d), any person who
16 has fulfilled the terms of a diversion agreement based on a violation of a
17 city ordinance of this state may petition the court for the expungement of
18 such diversion agreement and related arrest records if three or more years
19 have elapsed since the terms of the diversion agreement were fulfilled.

20 (b) No person may petition for expungement until five or more years
21 have elapsed since the person satisfied the sentence imposed or the terms
22 of a diversion agreement or was discharged from probation, parole,
23 conditional release or a suspended sentence, if such person was convicted
24 of the violation of a city ordinance which would also constitute:

25 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
26 repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto;

27 (2) driving while the privilege to operate a motor vehicle on the
28 public highways of this state has been canceled, suspended or revoked, as
29 prohibited by K.S.A. 8-262, and amendments thereto;

30 (3) perjury resulting from a violation of K.S.A. 8-261a, and
31 amendments thereto;

32 (4) a violation of the provisions of the fifth clause of K.S.A. 8-142,
33 and amendments thereto, relating to fraudulent applications;

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

36 (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 (7) a violation of the provisions of K.S.A. 40-3104, and amendments
3 thereto, relating to motor vehicle liability insurance coverage; or

4 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

5 (c) No person may petition for expungement until 10 or more years
6 have elapsed since the person satisfied the sentence imposed or the terms
7 of a diversion agreement or was discharged from probation, parole,
8 conditional release or a suspended sentence, if such person was convicted
9 of the violation of a city ordinance which would also constitute a violation
10 of K.S.A. 8-1567, and amendments thereto.

11 (d) There shall be no expungement of convictions or diversions for a
12 violation of a city ordinance which would also constitute a violation of
13 K.S.A. 8-2,144, and amendments thereto.

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

18 (2) the full name of the defendant at the time of arrest, conviction or
19 diversion, if different than the defendant's current name;

20 (3) the defendant's sex, race and date of birth;

21 (4) the crime for which the defendant was arrested, convicted or
22 diverted;

23 (5) the date of the defendant's arrest, conviction or diversion; and

24 (6) the identity of the convicting court, arresting law enforcement
25 agency or diverting authority. A municipal court may prescribe a fee to be
26 charged as costs for a person petitioning for an order of expungement
27 pursuant to this section. Any person who may have relevant information
28 about the petitioner may testify at the hearing. The court may inquire into
29 the background of the petitioner and shall have access to any reports or
30 records relating to the petitioner that are on file with the secretary of
31 corrections or the Kansas parole board.

32 (f) At the hearing on the petition, the court shall order the petitioner's
33 arrest record, conviction or diversion expunged if the court finds that:

34 (1) The petitioner has not been convicted of a felony in the past two
35 years and no proceeding involving any such crime is presently pending or
36 being instituted against the petitioner;

37 (2) the circumstances and behavior of the petitioner warrant the
38 expungement; and

39 (3) the expungement is consistent with the public welfare.

40 (g) When the court has ordered an arrest record, conviction or
41 diversion expunged, the order of expungement shall state the information
42 required to be contained in the petition. The clerk of the court shall send a
43 certified copy of the order of expungement to the Kansas bureau of

1 investigation which shall notify the federal bureau of investigation, the
2 secretary of corrections and any other criminal justice agency which may
3 have a record of the arrest, conviction or diversion. After the order of
4 expungement is entered, the petitioner shall be treated as not having been
5 arrested, convicted or diverted of the crime, except that:

6 (1) Upon conviction for any subsequent crime, the conviction that
7 was expunged may be considered as a prior conviction in determining the
8 sentence to be imposed;

9 (2) the petitioner shall disclose that the arrest, conviction or diversion
10 occurred if asked about previous arrests, convictions or diversions:

11 (A) In any application for employment as a detective with a private
12 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;
13 as security personnel with a private patrol operator, as defined by K.S.A.
14 75-7b01, and amendments thereto; or with an institution, as defined in
15 K.S.A. 76-12a01, and amendments thereto, of the department of social and
16 rehabilitation services;

17 (B) in any application for admission, or for an order of reinstatement,
18 to the practice of law in this state;

19 (C) to aid in determining the petitioner's qualifications for
20 employment with the Kansas lottery or for work in sensitive areas within
21 the Kansas lottery as deemed appropriate by the executive director of the
22 Kansas lottery;

23 (D) to aid in determining the petitioner's qualifications for executive
24 director of the Kansas racing and gaming commission, for employment
25 with the commission or for work in sensitive areas in parimutuel racing as
26 deemed appropriate by the executive director of the commission, or to aid
27 in determining qualifications for licensure or renewal of licensure by the
28 commission;

29 (E) to aid in determining the petitioner's qualifications for the
30 following under the Kansas expanded lottery act: (i) Lottery gaming
31 facility manager or prospective manager, racetrack gaming facility
32 manager or prospective manager, licensee or certificate holder; or (ii) an
33 officer, director, employee, owner, agent or contractor thereof;

34 (F) upon application for a commercial driver's license under K.S.A.
35 8-2,125 through 8-2,142, and amendments thereto;

36 (G) to aid in determining the petitioner's qualifications to be an
37 employee of the state gaming agency;

38 (H) to aid in determining the petitioner's qualifications to be an
39 employee of a tribal gaming commission or to hold a license issued
40 pursuant to a tribal-state gaming compact;

41 (I) in any application for registration as a broker-dealer, agent,
42 investment adviser or investment adviser representative all as defined in
43 K.S.A. 17-12a102, and amendments thereto;

1 (J) in any application for employment as a law enforcement officer, as
2 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; ~~or~~

3 (K) for applications received on and after July 1, 2006, to aid in
4 determining the petitioner's qualifications for a license to carry a concealed
5 weapon pursuant to the personal and family protection act, K.S.A. 2011
6 Supp. 75-7c01 *et seq.*, and amendments thereto; *or*

7 (L) *in any application for a license to engage in the business of*
8 *insurance;*

9 (3) the court, in the order of expungement, may specify other
10 circumstances under which the arrest, conviction or diversion is to be
11 disclosed; and

12 (4) the conviction may be disclosed in a subsequent prosecution for
13 an offense which requires as an element of such offense a prior conviction
14 of the type expunged.

15 (h) Whenever a person is convicted of an ordinance violation, pleads
16 guilty and pays a fine for such a violation, is placed on parole or probation
17 or is granted a suspended sentence for such a violation, the person shall be
18 informed of the ability to expunge the arrest records or conviction.
19 Whenever a person enters into a diversion agreement, the person shall be
20 informed of the ability to expunge the diversion.

21 (i) Subject to the disclosures required pursuant to subsection (g), in
22 any application for employment, license or other civil right or privilege, or
23 any appearance as a witness, a person whose arrest records, conviction or
24 diversion of an offense has been expunged under this statute may state that
25 such person has never been arrested, convicted or diverted of such offense.

26 (j) Whenever the record of any arrest, conviction or diversion has
27 been expunged under the provisions of this section or under the provisions
28 of any other existing or former statute, the custodian of the records of
29 arrest, conviction, diversion and incarceration relating to that crime shall
30 not disclose the existence of such records, except when requested by:

31 (1) The person whose record was expunged;

32 (2) a private detective agency or a private patrol operator, and the
33 request is accompanied by a statement that the request is being made in
34 conjunction with an application for employment with such agency or
35 operator by the person whose record has been expunged;

36 (3) a court, upon a showing of a subsequent conviction of the person
37 whose record has been expunged;

38 (4) the secretary of social and rehabilitation services, or a designee of
39 the secretary, for the purpose of obtaining information relating to
40 employment in an institution, as defined in K.S.A. 76-12a01, and
41 amendments thereto, of the department of social and rehabilitation services
42 of any person whose record has been expunged;

43 (5) a person entitled to such information pursuant to the terms of the

1 expungement order;

2 (6) a prosecuting attorney, and such request is accompanied by a
3 statement that the request is being made in conjunction with a prosecution
4 of an offense that requires a prior conviction as one of the elements of such
5 offense;

6 (7) the supreme court, the clerk or disciplinary administrator thereof,
7 the state board for admission of attorneys or the state board for discipline
8 of attorneys, and the request is accompanied by a statement that the
9 request is being made in conjunction with an application for admission, or
10 for an order of reinstatement, to the practice of law in this state by the
11 person whose record has been expunged;

12 (8) the Kansas lottery, and the request is accompanied by a statement
13 that the request is being made to aid in determining qualifications for
14 employment with the Kansas lottery or for work in sensitive areas within
15 the Kansas lottery as deemed appropriate by the executive director of the
16 Kansas lottery;

17 (9) the governor or the Kansas racing and gaming commission, or a
18 designee of the commission, and the request is accompanied by a
19 statement that the request is being made to aid in determining
20 qualifications for executive director of the commission, for employment
21 with the commission, for work in sensitive areas in parimutuel racing as
22 deemed appropriate by the executive director of the commission or for
23 licensure, renewal of licensure or continued licensure by the commission;

24 (10) the Kansas racing and gaming commission, or a designee of the
25 commission, and the request is accompanied by a statement that the
26 request is being made to aid in determining qualifications of the following
27 under the Kansas expanded lottery act: (A) Lottery gaming facility
28 managers and prospective managers, racetrack gaming facility managers
29 and prospective managers, licensees and certificate holders; and (B) their
30 officers, directors, employees, owners, agents and contractors;

31 (11) the state gaming agency, and the request is accompanied by a
32 statement that the request is being made to aid in determining
33 qualifications: (A) To be an employee of the state gaming agency; or (B)
34 to be an employee of a tribal gaming commission or to hold a license
35 issued pursuant to a tribal-state gaming compact;

36 (12) the Kansas securities commissioner, or a designee of the
37 commissioner, and the request is accompanied by a statement that the
38 request is being made in conjunction with an application for registration as
39 a broker-dealer, agent, investment adviser or investment adviser
40 representative by such agency and the application was submitted by the
41 person whose record has been expunged;

42 (13) the attorney general, and the request is accompanied by a
43 statement that the request is being made to aid in determining

1 qualifications for a license to carry a concealed weapon pursuant to the
2 personal and family protection act;

3 (14) the Kansas sentencing commission;

4 (15) the Kansas commission on peace officers' standards and training
5 and the request is accompanied by a statement that the request is being
6 made to aid in determining certification eligibility as a law enforcement
7 officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto; ~~or~~

8 (16) a law enforcement agency and the request is accompanied by a
9 statement that the request is being made to aid in determining eligibility
10 for employment as a law enforcement officer as defined by K.S.A. 22-
11 2202, and amendments thereto; *or*

12 (17) *the Kansas insurance commissioner or a designee of the*
13 *commissioner; and the request is accompanied by a statement that the*
14 *request is being made in conjunction with an application for a license to*
15 *engage in the business of insurance by such agent and the application was*
16 *submitted by the person whose record has been expunged.*

17 Sec. 2. K.S.A. 2011 Supp. 21-6614 is hereby amended to read as
18 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c) ~~and~~ ,
19 (d) *and* (e), any person convicted in this state of a traffic infraction,
20 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
21 for crimes committed on or after July 1, 1993, nondrug crimes ranked in
22 severity levels 6 through 10 or any felony ranked in severity level 4 of the
23 drug grid, may petition the convicting court for the expungement of such
24 conviction or related arrest records if three or more years have elapsed
25 since the person: (A) Satisfied the sentence imposed; or (B) was
26 discharged from probation, a community correctional services program,
27 parole, postrelease supervision, conditional release or a suspended
28 sentence.

29 (2) Except as provided in subsections (b), (c) ~~and~~ , (d) *and* (e), any
30 person who has fulfilled the terms of a diversion agreement may petition
31 the district court for the expungement of such diversion agreement and
32 related arrest records if three or more years have elapsed since the terms of
33 the diversion agreement were fulfilled.

34 (b) Except as provided in subsections (c) ~~and~~ , (d) *and* (e), no person
35 may petition for expungement until five or more years have elapsed since
36 the person satisfied the sentence imposed, the terms of a diversion
37 agreement or was discharged from probation, a community correctional
38 services program, parole, postrelease supervision, conditional release or a
39 suspended sentence, if such person was convicted of a class A, B or C
40 felony, or for crimes committed on or after July 1, 1993, if convicted of an
41 off-grid felony or any nondrug crime ranked in severity levels 1 through 5
42 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

43 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its

1 repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as
2 prohibited by any law of another state which is in substantial conformity
3 with that statute;

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

9 (3) perjury resulting from a violation of K.S.A. 8-261a, and
10 amendments thereto, or resulting from the violation of a law of another
11 state which is in substantial conformity with that statute;

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

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

18 (6) failing to stop at the scene of an accident and perform the duties
19 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or
20 required by a law of another state which is in substantial conformity with
21 those statutes;

22 (7) violating the provisions of K.S.A. 40-3104, and amendments
23 thereto, relating to motor vehicle liability insurance coverage; or

24 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

25 (c) No person may petition for expungement until 10 or more years
26 have elapsed since the person satisfied the sentence imposed, the terms of
27 a diversion agreement or was discharged from probation, a community
28 correctional services program, parole, postrelease supervision, conditional
29 release or a suspended sentence, if such person was convicted of a
30 violation of K.S.A. 8-1567, and amendments thereto, including any
31 diversion for such violation.

32 (d) There shall be no expungement of convictions for the following
33 offenses or of convictions for an attempt to commit any of the following
34 offenses:

35 (1) Rape as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
36 2011 Supp. 21-5503, and amendments thereto;

37 (2) indecent liberties with a child or aggravated indecent liberties
38 with a child as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
39 or K.S.A. 2011 Supp. 21-5506, and amendments thereto;

40 (3) criminal sodomy as defined in subsection (a)(2) or (a)(3) of
41 K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A.
42 2011 Supp. 21-5504, and amendments thereto;

43 (4) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior

1 to its repeal, or K.S.A. 2011 Supp. 21-5504, and amendments thereto;

2 (5) indecent solicitation of a child or aggravated indecent solicitation
3 of a child as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or
4 K.S.A. 2011 Supp. 21-5508, and amendments thereto;

5 (6) sexual exploitation of a child as defined in K.S.A. 21-3516, prior
6 to its repeal, or K.S.A. 2011 Supp. 21-5510, and amendments thereto;

7 (7) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal,
8 or K.S.A. 2011 Supp. 21-5604, and amendments thereto;

9 (8) endangering a child or aggravated endangering a child as defined
10 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2011 Supp.
11 21-5601, and amendments thereto;

12 (9) abuse of a child as defined in K.S.A. 21-3609, prior to its repeal,
13 or K.S.A. 2011 Supp. 21-5602, and amendments thereto;

14 (10) capital murder as defined in K.S.A. 21-3439, prior to its repeal,
15 or K.S.A. 2011 Supp. 21-5401, and amendments thereto;

16 (11) murder in the first degree as defined in K.S.A. 21-3401, prior to
17 its repeal, or K.S.A. 2011 Supp. 21-5402, and amendments thereto;

18 (12) murder in the second degree as defined in K.S.A. 21-3402, prior
19 to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments thereto;

20 (13) voluntary manslaughter as defined in K.S.A. 21-3403, prior to its
21 repeal, or K.S.A. 2011 Supp. 21-5404, and amendments thereto;

22 (14) involuntary manslaughter as defined in K.S.A. 21-3404, prior to
23 its repeal, or K.S.A. 2011 Supp. 21-5405, and amendments thereto;

24 (15) sexual battery as defined in K.S.A. 21-3517, prior to its repeal,
25 or K.S.A. 2011 Supp. 21-5505, and amendments thereto, when the victim
26 was less than 18 years of age at the time the crime was committed;

27 (16) aggravated sexual battery as defined in K.S.A. 21-3518, prior to
28 its repeal, or K.S.A. 2011 Supp. 21-5505, and amendments thereto;

29 (17) a violation of K.S.A. 8-2,144, and amendments thereto,
30 including any diversion for such violation; or

31 (18) any conviction for any offense in effect at any time prior to July
32 1, 2011, that is comparable to any offense as provided in this subsection.

33 *(e) Notwithstanding any other law to the contrary, for any offender
34 who is required to register as provided in the Kansas offender registration
35 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
36 expungement of any conviction or any part of the offender's criminal
37 record while the offender is required to register as provided in the Kansas
38 offender registration act.*

39 ~~(e)~~ (f) (1) When a petition for expungement is filed, the court shall set
40 a date for a hearing of such petition and shall cause notice of such hearing
41 to be given to the prosecutor and the arresting law enforcement agency.
42 The petition shall state the:

43 (A) Defendant's full name;

1 (B) full name of the defendant at the time of arrest, conviction or
2 diversion, if different than the defendant's current name;

3 (C) defendant's sex, race and date of birth;

4 (D) crime for which the defendant was arrested, convicted or
5 diverted;

6 (E) date of the defendant's arrest, conviction or diversion; and

7 (F) identity of the convicting court, arresting law enforcement
8 authority or diverting authority.

9 (2) Except as otherwise provided by law, a petition for expungement
10 shall be accompanied by a docket fee in the amount of \$100. On and after
11 ~~April 15, 2010 through June 30, 2011~~ *May 19, 2011, through June 30,*
12 *2012*, the supreme court may impose a charge, not to exceed ~~\$15~~ \$19 per
13 case, to fund the costs of non-judicial personnel. The charge established in
14 this section shall be the only fee collected or moneys in the nature of a fee
15 collected for the case. Such charge shall only be established by an act of
16 the legislature and no other authority is established by law or otherwise to
17 collect a fee.

18 (3) All petitions for expungement shall be docketed in the original
19 criminal action. Any person who may have relevant information about the
20 petitioner may testify at the hearing. The court may inquire into the
21 background of the petitioner and shall have access to any reports or
22 records relating to the petitioner that are on file with the secretary of
23 corrections or the Kansas parole board.

24 ~~(f)~~ (g) At the hearing on the petition, the court shall order the
25 petitioner's arrest record, conviction or diversion expunged if the court
26 finds that:

27 (1) The petitioner has not been convicted of a felony in the past two
28 years and no proceeding involving any such crime is presently pending or
29 being instituted against the petitioner;

30 (2) the circumstances and behavior of the petitioner warrant the
31 expungement;

32 (3) the expungement is consistent with the public welfare.

33 ~~(g)~~ (h) When the court has ordered an arrest record, conviction or
34 diversion expunged, the order of expungement shall state the information
35 required to be contained in the petition. The clerk of the court shall send a
36 certified copy of the order of expungement to the Kansas bureau of
37 investigation which shall notify the federal bureau of investigation, the
38 secretary of corrections and any other criminal justice agency which may
39 have a record of the arrest, conviction or diversion. After the order of
40 expungement is entered, the petitioner shall be treated as not having been
41 arrested, convicted or diverted of the crime, except that:

42 (1) Upon conviction for any subsequent crime, the conviction that
43 was expunged may be considered as a prior conviction in determining the

1 sentence to be imposed;

2 (2) the petitioner shall disclose that the arrest, conviction or diversion
3 occurred if asked about previous arrests, convictions or diversions:

4 (A) In any application for licensure as a private detective, private
5 detective agency, certification as a firearms trainer pursuant to K.S.A.
6 2011 Supp. 75-7b21, and amendments thereto, or employment as a
7 detective with a private detective agency, as defined by K.S.A. 75-7b01,
8 and amendments thereto; as security personnel with a private patrol
9 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
10 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
11 the department of social and rehabilitation services;

12 (B) in any application for admission, or for an order of reinstatement,
13 to the practice of law in this state;

14 (C) to aid in determining the petitioner's qualifications for
15 employment with the Kansas lottery or for work in sensitive areas within
16 the Kansas lottery as deemed appropriate by the executive director of the
17 Kansas lottery;

18 (D) to aid in determining the petitioner's qualifications for executive
19 director of the Kansas racing and gaming commission, for employment
20 with the commission or for work in sensitive areas in parimutuel racing as
21 deemed appropriate by the executive director of the commission, or to aid
22 in determining qualifications for licensure or renewal of licensure by the
23 commission;

24 (E) to aid in determining the petitioner's qualifications for the
25 following under the Kansas expanded lottery act: (i) Lottery gaming
26 facility manager or prospective manager, racetrack gaming facility
27 manager or prospective manager, licensee or certificate holder; or (ii) an
28 officer, director, employee, owner, agent or contractor thereof;

29 (F) upon application for a commercial driver's license under K.S.A.
30 8-2,125 through 8-2,142, and amendments thereto;

31 (G) to aid in determining the petitioner's qualifications to be an
32 employee of the state gaming agency;

33 (H) to aid in determining the petitioner's qualifications to be an
34 employee of a tribal gaming commission or to hold a license issued
35 pursuant to a tribal-state gaming compact;

36 (I) in any application for registration as a broker-dealer, agent,
37 investment adviser or investment adviser representative all as defined in
38 K.S.A. 17-12a102, and amendments thereto;

39 (J) in any application for employment as a law enforcement officer as
40 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

41 (K) for applications received on and after July 1, 2006, to aid in
42 determining the petitioner's qualifications for a license to carry a concealed
43 weapon pursuant to the personal and family protection act, K.S.A. 2011

1 Supp. 75-7c01 *et seq.*, and amendments thereto; or

2 (L) in any application for a license to engage in the business of
3 insurance;

4 (3) the court, in the order of expungement, may specify other
5 circumstances under which the conviction is to be disclosed;

6 (4) the conviction may be disclosed in a subsequent prosecution for
7 an offense which requires as an element of such offense a prior conviction
8 of the type expunged; and

9 (5) upon commitment to the custody of the secretary of corrections,
10 any previously expunged record in the possession of the secretary of
11 corrections may be reinstated and the expungement disregarded, and the
12 record continued for the purpose of the new commitment.

13 ~~(h)~~ (i) Whenever a person is convicted of a crime, pleads guilty and
14 pays a fine for a crime, is placed on parole, postrelease supervision or
15 probation, is assigned to a community correctional services program, is
16 granted a suspended sentence or is released on conditional release, the
17 person shall be informed of the ability to expunge the arrest records or
18 conviction. Whenever a person enters into a diversion agreement, the
19 person shall be informed of the ability to expunge the diversion.

20 ~~(h)~~ (j) Subject to the disclosures required pursuant to subsection ~~(h)~~
21 (h), in any application for employment, license or other civil right or
22 privilege, or any appearance as a witness, a person whose arrest records,
23 conviction or diversion of a crime has been expunged under this statute
24 may state that such person has never been arrested, convicted or diverted
25 of such crime, but the expungement of a felony conviction does not relieve
26 an individual of complying with any state or federal law relating to the use
27 or possession of firearms by persons convicted of a felony.

28 ~~(h)~~ (k) Whenever the record of any arrest, conviction or diversion has
29 been expunged under the provisions of this section or under the provisions
30 of any other existing or former statute, the custodian of the records of
31 arrest, conviction, diversion and incarceration relating to that crime shall
32 not disclose the existence of such records, except when requested by:

33 (1) The person whose record was expunged;

34 (2) a private detective agency or a private patrol operator, and the
35 request is accompanied by a statement that the request is being made in
36 conjunction with an application for employment with such agency or
37 operator by the person whose record has been expunged;

38 (3) a court, upon a showing of a subsequent conviction of the person
39 whose record has been expunged;

40 (4) the secretary of social and rehabilitation services, or a designee of
41 the secretary, for the purpose of obtaining information relating to
42 employment in an institution, as defined in K.S.A. 76-12a01, and
43 amendments thereto, of the department of social and rehabilitation services

1 of any person whose record has been expunged;

2 (5) a person entitled to such information pursuant to the terms of the
3 expungement order;

4 (6) a prosecutor, and such request is accompanied by a statement that
5 the request is being made in conjunction with a prosecution of an offense
6 that requires a prior conviction as one of the elements of such offense;

7 (7) the supreme court, the clerk or disciplinary administrator thereof,
8 the state board for admission of attorneys or the state board for discipline
9 of attorneys, and the request is accompanied by a statement that the
10 request is being made in conjunction with an application for admission, or
11 for an order of reinstatement, to the practice of law in this state by the
12 person whose record has been expunged;

13 (8) the Kansas lottery, and the request is accompanied by a statement
14 that the request is being made to aid in determining qualifications for
15 employment with the Kansas lottery or for work in sensitive areas within
16 the Kansas lottery as deemed appropriate by the executive director of the
17 Kansas lottery;

18 (9) the governor or the Kansas racing and gaming commission, or a
19 designee of the commission, and the request is accompanied by a
20 statement that the request is being made to aid in determining
21 qualifications for executive director of the commission, for employment
22 with the commission, for work in sensitive areas in parimutuel racing as
23 deemed appropriate by the executive director of the commission or for
24 licensure, renewal of licensure or continued licensure by the commission;

25 (10) the Kansas racing and gaming commission, or a designee of the
26 commission, and the request is accompanied by a statement that the
27 request is being made to aid in determining qualifications of the following
28 under the Kansas expanded lottery act: (A) Lottery gaming facility
29 managers and prospective managers, racetrack gaming facility managers
30 and prospective managers, licensees and certificate holders; and (B) their
31 officers, directors, employees, owners, agents and contractors;

32 (11) the Kansas sentencing commission;

33 (12) the state gaming agency, and the request is accompanied by a
34 statement that the request is being made to aid in determining
35 qualifications: (A) To be an employee of the state gaming agency; or (B)
36 to be an employee of a tribal gaming commission or to hold a license
37 issued pursuant to a tribal-gaming compact;

38 (13) the Kansas securities commissioner or a designee of the
39 commissioner, and the request is accompanied by a statement that the
40 request is being made in conjunction with an application for registration as
41 a broker-dealer, agent, investment adviser or investment adviser
42 representative by such agency and the application was submitted by the
43 person whose record has been expunged;

1 (14) the Kansas commission on peace officers' standards and training
2 and the request is accompanied by a statement that the request is being
3 made to aid in determining certification eligibility as a law enforcement
4 officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto;

5 (15) a law enforcement agency and the request is accompanied by a
6 statement that the request is being made to aid in determining eligibility
7 for employment as a law enforcement officer as defined by K.S.A. 22-
8 2202, and amendments thereto; ~~or~~

9 (16) the attorney general and the request is accompanied by a
10 statement that the request is being made to aid in determining
11 qualifications for a license to carry a concealed weapon pursuant to the
12 personal and family protection act; ;

13 (17) *the Kansas bureau of investigation for the purposes of:*

14 (A) *Completing a person's criminal history record information within*
15 *the central repository, in accordance with K.S.A. 22-4701 et seq., and*
16 *amendments thereto; or*

17 (B) *providing information or documentation to the federal bureau of*
18 *investigation, in connection with the national instant criminal background*
19 *check system, to determine a person's qualification to possess a firearm;*
20 *or*

21 (18) *the Kansas insurance commissioner or a designee of the*
22 *commissioner, and the request is accompanied by a statement that the*
23 *request is being made in conjunction with an application for a license to*
24 *engage in the business of insurance by such agent and the application was*
25 *submitted by the person whose record has been expunged.*

26 (l) *The provisions of subsection (k)(17) shall apply to records created*
27 *prior to, on and after July 1, 2011.*

28 Sec. 3. K.S.A. 2011 Supp. 22-2410 is hereby amended to read as
29 follows: 22-2410. (a) Any person who has been arrested in this state may
30 petition the district court for the expungement of such arrest record.

31 (b) When a petition for expungement is filed, the court shall set a date
32 for hearing on such petition and shall cause notice of such hearing to be
33 given to the prosecuting attorney and the arresting law enforcement
34 agency. When a petition for expungement is filed, the official court file
35 shall be separated from the other records of the court, and shall be
36 disclosed only to a judge of the court and members of the staff of the court
37 designated by a judge of the district court, the prosecuting attorney, the
38 arresting law enforcement agency, or any other person when authorized by
39 a court order, subject to any conditions imposed by the order. Except as
40 otherwise provided by law, a petition for expungement shall be
41 accompanied by a docket fee in the amount of \$100. Except as provided
42 further, the docket fee established in this section shall be the only fee
43 collected or moneys in the nature of a fee collected for the docket fee.

1 Such fee shall only be established by an act of the legislature and no other
2 authority is established by law or otherwise to collect a fee. On and after
3 ~~the effective date of this act~~ *May 19, 2011*, through June 30, 2012, the
4 supreme court may impose an additional charge, not to exceed \$19 per
5 docket fee, to fund the costs of non-judicial personnel. The petition shall
6 state:

- 7 (1) The petitioner's full name;
- 8 (2) the full name of the petitioner at the time of arrest, if different
9 than the petitioner's current name;
- 10 (3) the petitioner's sex, race and date of birth;
- 11 (4) the crime for which the petitioner was arrested;
- 12 (5) the date of the petitioner's arrest; and
- 13 (6) the identity of the arresting law enforcement agency.

14 No surcharge or fee shall be imposed to any person filing a petition
15 pursuant to this section, who was arrested as a result of being a victim of
16 identity theft under K.S.A. 21-4018, prior to its repeal, or subsection (a) of
17 K.S.A. 2011 Supp. 21-6107, and amendments thereto, *or who has had*
18 *criminal charges dismissed because a court has found that there was no*
19 *probable cause for the arrest, the petitioner was found not guilty in court*
20 *proceedings or the charges have been dismissed.* Any person who may
21 have relevant information about the petitioner may testify at the hearing.
22 The court may inquire into the background of the petitioner.

23 (c) At the hearing on a petition for expungement, the court shall order
24 the arrest record and subsequent court proceedings, if any, expunged upon
25 finding: (1) The arrest occurred because of mistaken identity;

- 26 (2) a court has found that there was no probable cause for the arrest;
- 27 (3) the petitioner was found not guilty in court proceedings; or
- 28 (4) the expungement would be in the best interests of justice and: (A)
29 Charges have been dismissed; or (B) no charges have been or are likely to
30 be filed.

31 (d) When the court has ordered expungement of an arrest record and
32 subsequent court proceedings, if any, the order shall state the information
33 required to be stated in the petition and shall state the grounds for
34 expungement under subsection (c). The clerk of the court shall send a
35 certified copy of the order to the Kansas bureau of investigation which
36 shall notify the federal bureau of investigation, the secretary of corrections
37 and any other criminal justice agency which may have a record of the
38 arrest. If an order of expungement is entered, the petitioner shall be treated
39 as not having been arrested.

40 (e) If the ground for expungement is as provided in subsection (c)(4),
41 the court shall determine whether, in the interests of public welfare, the
42 records should be available for any of the following purposes: (1) In any
43 application for employment as a detective with a private detective agency,

1 as defined in K.S.A. 75-7b01, and amendments thereto; as security
2 personnel with a private patrol operator, as defined by K.S.A. 75-7b01,
3 and amendments thereto; or with an institution, as defined in K.S.A. 76-
4 12a01, and amendments thereto, of the department of social and
5 rehabilitation services;

6 (2) in any application for admission, or for an order of reinstatement,
7 to the practice of law in this state;

8 (3) to aid in determining the petitioner's qualifications for
9 employment with the Kansas lottery or for work in sensitive areas within
10 the Kansas lottery as deemed appropriate by the executive director of the
11 Kansas lottery;

12 (4) to aid in determining the petitioner's qualifications for executive
13 director of the Kansas racing commission, for employment with the
14 commission or for work in sensitive areas in parimutuel racing as deemed
15 appropriate by the executive director of the commission, or to aid in
16 determining qualifications for licensure or renewal of licensure by the
17 commission;

18 (5) in any application for a commercial driver's license under K.S.A.
19 8-2,125 through 8-2,142, and amendments thereto;

20 (6) to aid in determining the petitioner's qualifications to be an
21 employee of the state gaming agency;

22 (7) to aid in determining the petitioner's qualifications to be an
23 employee of a tribal gaming commission or to hold a license issued
24 pursuant to a tribal-state gaming compact; ~~or~~

25 (8) *to aid in determining the petitioner's qualifications for a license*
26 *to engage in the business of insurance; or*

27 ~~(8)~~ (9) in any other circumstances which the court deems appropriate.

28 (f) *The court shall make all expunged records and related*
29 *information in such court's possession, created prior to, on and after July*
30 *1, 2011, available to the Kansas bureau of investigation for the purposes*
31 *of:*

32 (1) *Completing a person's criminal history record information within*
33 *the central repository in accordance with K.S.A. 22-4701 et seq., and*
34 *amendments thereto; or*

35 (2) *providing information or documentation to the federal bureau of*
36 *investigation, in connection with the national instant criminal background*
37 *check system, to determine a person's qualification to possess a firearm.*

38 ~~(f)~~ (g) Subject to any disclosures required under subsection (e), in any
39 application for employment, license or other civil right or privilege, or any
40 appearance as a witness, a person whose arrest records have been
41 expunged as provided in this section may state that such person has never
42 been arrested.

43 ~~(g)~~ (h) Whenever a petitioner's arrest records have been expunged as

1 provided in this section, the custodian of the records of arrest,
2 incarceration due to arrest or court proceedings related to the arrest, shall
3 not disclose the arrest or any information related to the arrest, except as
4 directed by the order of expungement or when requested by the person
5 whose arrest record was expunged.

6 ~~(h)~~ (i) The docket fee collected at the time the petition for
7 expungement is filed shall be disbursed in accordance with K.S.A. 20-362,
8 and amendments thereto.

9 Sec. 4. K.S.A. 2011 Supp. 12-4516, 21-6614, 21-6614a, 21-6614b,
10 21-6614c, 22-2410 and 22-2410a are hereby repealed.

11 Sec. 5. This act shall take effect and be in force from and after its
12 publication in the statute book.

13