

Substitute for HOUSE BILL No. 2159

By Committee on Judiciary

2-24

1 AN ACT concerning driving; relating to ~~convictions and diversions;~~
2 ~~expungement of~~ driving under the influence and other driving offenses;
3 *{DUI-IID designation; DUI-IID designation fund; expungement of*
4 *convictions and diversions;}* amending K.S.A. 2014 Supp. *{8-241,}* 12-
5 4516 and 21-6614 and repealing the existing sections; also repealing
6 K.S.A. 2014 Supp. 12-4516b and 21-6614e.
7

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

9 *{Section 1. K.S.A. 2014 Supp. 8-241 is hereby amended to read as*
10 *follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-*
11 *2,142, and amendments thereto, any person licensed to operate a motor*
12 *vehicle in this state shall submit to an examination whenever: (1) The*
13 *division of vehicles has good cause to believe that such person is*
14 *incompetent or otherwise not qualified to be licensed; or (2) the division*
15 *of vehicles has suspended such person's license pursuant to K.S.A. 8-*
16 *1014, and amendments thereto, as the result of a test refusal, test failure*
17 *or conviction for a violation of K.S.A. 8-1567, and amendments thereto,*
18 *or a violation of a city ordinance or county resolution prohibiting the*
19 *acts prohibited by K.S.A. 8-1567, and amendments thereto, except that*
20 *no person shall have to submit to and successfully complete an*
21 *examination more than once as the result of separate suspensions*
22 *arising out of the same occurrence.*

23 *(b) When a person is required to submit to an examination*
24 *pursuant to subsection (a)(1), the fee for such examination shall be in*
25 *the amount provided by K.S.A. 8-240, and amendments thereto. When a*
26 *person is required to submit to an examination pursuant to subsection*
27 *(a)(2), the fee for such examination shall be \$25. In addition, any person*
28 *required to submit to an examination pursuant to subsection (a)(2) as*
29 *the result of a test failure, a conviction for a violation of K.S.A. 8-1567,*
30 *and amendments thereto, or a violation of a city ordinance or county*
31 *resolution prohibiting the acts prohibited by K.S.A. 8-1567, and*
32 *amendments thereto, shall be required, at the time of examination, to*
33 *pay a reinstatement fee of \$200 after the first occurrence, \$400 after the*

1 *second occurrence, \$600 after the third occurrence and \$800 after the*
2 *fourth or subsequent occurrence; and as a result of a test refusal, a*
3 *conviction for a violation of K.S.A. 2014 Supp. 8-1025, and amendments*
4 *thereto, or a violation of a city ordinance or county resolution*
5 *prohibiting the acts prohibited by K.S.A. 2014 Supp. 8-1025, and*
6 *amendments thereto, shall be required, at the time of examination, to*
7 *pay a reinstatement fee of \$600 after the first occurrence, \$900 after the*
8 *second occurrence, \$1,200 after the third occurrence and \$1,500 after*
9 *the fourth or subsequent occurrence.*

10 *(1) All examination fees collected pursuant to this section shall be*
11 *remitted to the state treasurer, in accordance with the provisions of*
12 *K.S.A. 75-4215, and amendments thereto, who shall deposit the entire*
13 *amount in the state treasury and credit 80% to the state highway fund*
14 *and 20% shall be disposed of as provided in K.S.A. 8-267, and*
15 *amendments thereto.*

16 *(2) On and after July 1, 2014, through June 30, 2018, all*
17 *reinstatement fees collected pursuant to this section shall be remitted to*
18 *the state treasurer, in accordance with the provisions of K.S.A. 75-4215,*
19 *and amendments thereto, who shall deposit the entire amount in the*
20 *state treasury and credit 26% to the community alcoholism and*
21 *intoxication programs fund created pursuant to K.S.A. 41-1126, and*
22 *amendments thereto, 12% to the juvenile detention facilities fund*
23 *created by K.S.A. 79-4803, and amendments thereto, 12% to the forensic*
24 *laboratory and materials fee fund created by K.S.A. 28-176, and*
25 *amendments thereto, 17% to the driving under the influence fund*
26 *created by K.S.A. 75-5660, and amendments thereto, and 33% to the*
27 *judicial branch nonjudicial salary adjustment fund created by K.S.A. 20-*
28 *1a15, and amendments thereto. Moneys credited to the forensic*
29 *laboratory and materials fee fund as provided herein shall be used to*
30 *supplement existing appropriations and shall not be used to supplant*
31 *general fund appropriations to the Kansas bureau of investigation.*

32 *(3) On and after July 1, 2018, all reinstatement fees collected*
33 *pursuant to this section shall be remitted to the state treasurer, in*
34 *accordance with the provisions of K.S.A. 75-4215, and amendments*
35 *thereto, who shall deposit the entire amount in the state treasury and*
36 *credit 35% to the community alcoholism and intoxication programs fund*
37 *created pursuant to K.S.A. 41-1126, and amendments thereto, 20% to the*
38 *juvenile detention facilities fund created by K.S.A. 79-4803, and*
39 *amendments thereto, 20% to the forensic laboratory and materials fee*
40 *fund created by K.S.A. 28-176, and amendments thereto, and 25% to the*
41 *driving under the influence fund created by K.S.A. 75-5660, and*
42 *amendments thereto. Moneys credited to the forensic laboratory and*
43 *materials fee fund as provided herein shall be used to supplement*

1 *existing appropriations and shall not be used to supplant general fund*
2 *appropriations to the Kansas bureau of investigation.*

3 *(c) When an examination is required pursuant to subsection (a), at*
4 *least five days' written notice of the examination shall be given to the*
5 *licensee. The examination administered hereunder shall be at least*
6 *equivalent to the examination required by ~~subsection (e) of K.S.A. 8-~~*
7 *247(e), and amendments thereto, with such additional tests as the*
8 *division deems necessary. Upon the conclusion of such examination, the*
9 *division shall take action as may be appropriate and may suspend or*
10 *revoke the license of such person or permit the licensee to retain such*
11 *license, or may issue a license subject to restrictions as permitted under*
12 *K.S.A. 8-245, and amendments thereto.*

13 *(d) Refusal or neglect of the licensee to submit to an examination*
14 *as required by this section shall be grounds for suspension or revocation*
15 *of the license.*

16 *(e) The division may issue a driver's license with a DUI-IID*
17 *designation for a licensee that is operating under ignition interlock*
18 *restrictions required by K.S.A. 8-1014, and amendments thereto. The*
19 *reexamination requirement in subsection (a)(2) shall not require*
20 *reexamination and payment of reinstatement fees until the end of the*
21 *licensee's ignition interlock restriction period. If the applicant's Kansas*
22 *driver's license has been expired for one year or more, the applicant must*
23 *complete a reexamination and pay any applicable reinstatement fees*
24 *before qualifying for a driver's license with an ignition interlock*
25 *designation. All other requirements for issuance and renewal of a driver's*
26 *license under K.S.A. 8-240, and amendments thereto, shall continue to*
27 *apply. The renewal periods and other requirements in K.S.A. 8-247, and*
28 *amendments thereto, shall apply. The fees charged for the driver's license*
29 *with ignition interlock designation shall include: (1) The fee amounts set*
30 *out in K.S.A. 8-240(f), and amendments thereto; (2) fees prescribed by the*
31 *secretary of revenue and required in K.S.A. 8-243(a), and amendments*
32 *thereto; and (3) a \$10 fee to the DUI-IID designation fund. There is*
33 *hereby created in the state treasury the DUI-IID designation fund. All*
34 *moneys credited to the DUI-IID designation fund shall be used by the*
35 *department of revenue only for the purpose of funding the administration*
36 *and oversight of state certified ignition interlock manufacturers and their*
37 *service providers.}*

38 ~~Section 1.~~ **{Sec. 2.}** K.S.A. 2014 Supp. 12-4516 is hereby amended to
39 read as follows: 12-4516. (a) (1) Except as provided in subsections (b), (c),
40 (d), (e) and (f), any person who has been convicted of a violation of a city
41 ordinance of this state may petition the convicting court for the
42 expungement of such conviction and related arrest records if three or more
43 years have elapsed since the person:

1 (A) Satisfied the sentence imposed; or

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

3 (2) Except as provided in subsections (b), (c), (d), (e) and (f), any
4 person who has fulfilled the terms of a diversion agreement based on a
5 violation of a city ordinance of this state may petition the court for the
6 expungement of such diversion agreement and related arrest records if
7 three or more years have elapsed since the terms of the diversion
8 agreement were fulfilled.

9 (b) Any person convicted of a violation of any ordinance that is
10 prohibited by either ~~subsection (a) or (b)~~ of K.S.A. 2014 Supp. 12-
11 16,134(a) or (b), and amendments thereto, and which was adopted prior to
12 July 1, 2014, or who entered into a diversion agreement in lieu of further
13 criminal proceedings for such violation, may petition the convicting court
14 for the expungement of such conviction or diversion agreement and related
15 arrest records.

16 (c) Any person convicted of the violation of a city ordinance which
17 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
18 violation of K.S.A. 2014 Supp. 21-6419, and amendments thereto, or who
19 entered into a diversion agreement in lieu of further criminal proceedings
20 for such violation, may petition the convicting court for the expungement
21 of such conviction or diversion agreement and related arrest records if:

22 (1) One or more years have elapsed since the person satisfied the
23 sentence imposed or the terms of a diversion agreement or was discharged
24 from probation, parole, conditional release or a suspended sentence; and

25 (2) such person can prove they were acting under coercion caused by
26 the act of another. For purposes of this subsection, "coercion" means:
27 Threats of harm or physical restraint against any person; a scheme, plan or
28 pattern intended to cause a person to believe that failure to perform an act
29 would result in bodily harm or physical restraint against any person; or the
30 abuse or threatened abuse of the legal process.

31 (d) No person may petition for expungement until five or more years
32 have elapsed since the person satisfied the sentence imposed or the terms
33 of a diversion agreement or was discharged from probation, parole,
34 conditional release or a suspended sentence, if such person was convicted
35 of the violation of a city ordinance which would also constitute:

36 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
37 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto;

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

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

43 (4) a violation of the provisions of ~~the fifth clause of~~ K.S.A. 8-

1 142*Fifth*, and amendments thereto, relating to fraudulent applications;

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

4 (6) failing to stop at the scene of an accident and perform the duties
5 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and
6 amendments thereto;

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

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

10 (e) **(1)** No person may petition for expungement until ~~40~~ *five* or more
11 years have elapsed since the person satisfied the sentence imposed or the
12 terms of a diversion agreement or was discharged from probation, parole,
13 conditional release or a suspended sentence, if such person was convicted
14 of ~~the~~ **a first** violation of a city ordinance which would also constitute a
15 **first** violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and
16 amendments thereto.

17 **(2)** *No person may petition for expungement until 10 or more years*
18 *have elapsed since the person satisfied the sentence imposed or was*
19 *discharged from probation, parole, conditional release or a suspended*
20 *sentence, if such person was convicted of a second or subsequent*
21 *violation of a city ordinance which would also constitute a second or*
22 *subsequent violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and*
23 *amendments thereto.*

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

27 (g) (1) When a petition for expungement is filed, the court shall set a
28 date for a hearing of such petition and shall cause notice of such hearing to
29 be given to the prosecuting attorney and the arresting law enforcement
30 agency. The petition shall state the:

31 (A) Defendant's full name;

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

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

35 (D) crime for which the defendant was arrested, convicted or
36 diverted;

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

38 (F) identity of the convicting court, arresting law enforcement agency
39 or diverting authority.

40 (2) A municipal court may prescribe a fee to be charged as costs for a
41 person petitioning for an order of expungement pursuant to this section.

42 (3) Any person who may have relevant information about the
43 petitioner may testify at the hearing. The court may inquire into the

1 background of the petitioner and shall have access to any reports or
2 records relating to the petitioner that are on file with the secretary of
3 corrections or the prisoner review board.

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

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

9 (2) the circumstances and behavior of the petitioner warrant the
10 expungement; and

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

12 (i) When the court has ordered an arrest record, conviction or
13 diversion expunged, the order of expungement shall state the information
14 required to be contained in the petition. The clerk of the court shall send a
15 certified copy of the order of expungement to the Kansas bureau of
16 investigation which shall notify the federal bureau of investigation, the
17 secretary of corrections and any other criminal justice agency which may
18 have a record of the arrest, conviction or diversion. After the order of
19 expungement is entered, the petitioner shall be treated as not having been
20 arrested, convicted or diverted of the crime, except that:

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

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

26 (A) In any application for *licensure as a private detective, private*
27 *detective agency, certification as a firearms trainer pursuant to K.S.A.*
28 *2014 Supp. 75-7b21, and amendments thereto, or employment as a*
29 *detective with a private detective agency, as defined by K.S.A. 75-7b01,*
30 *and amendments thereto; as security personnel with a private patrol*
31 *operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with*
32 *an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of*
33 *the department for ~~children and families~~ aging and disability services;*

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

36 (C) to aid in determining the petitioner's qualifications for
37 employment with the Kansas lottery or for work in sensitive areas within
38 the Kansas lottery as deemed appropriate by the executive director of the
39 Kansas lottery;

40 (D) to aid in determining the petitioner's qualifications for executive
41 director of the Kansas racing and gaming commission, for employment
42 with the commission or for work in sensitive areas in parimutuel racing as
43 deemed appropriate by the executive director of the commission, or to aid

1 in determining qualifications for licensure or renewal of licensure by the
2 commission;

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

8 (F) upon application for a commercial driver's license under K.S.A.
9 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

20 (K) for applications received on and after July 1, 2006, to aid in
21 determining the petitioner's qualifications for a license to carry a concealed
22 weapon pursuant to the personal and family protection act, K.S.A. 2014
23 Supp. 75-7c01 et seq., and amendments thereto;

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

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

30 (j) Whenever a person is convicted of an ordinance violation, pleads
31 guilty and pays a fine for such a violation, is placed on parole or probation
32 or is granted a suspended sentence for such a violation, the person shall be
33 informed of the ability to expunge the arrest records or conviction.
34 Whenever a person enters into a diversion agreement, the person shall be
35 informed of the ability to expunge the diversion.

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

41 (l) Whenever the record of any arrest, conviction or diversion has
42 been expunged under the provisions of this section or under the provisions
43 of any other existing or former statute, the custodian of the records of

1 arrest, conviction, diversion and incarceration relating to that crime shall
2 not disclose the existence of such records, except when requested by:

3 (1) The person whose record was expunged;

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

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

10 (4) ~~the secretary of the department for children and families~~ *for aging*
11 *and disability services*, or a designee of the secretary, for the purpose of
12 obtaining information relating to employment in an institution, as defined
13 in K.S.A. 76-12a01, and amendments thereto, of the department for
14 ~~children and families~~ *aging and disability services* of any person whose
15 record has been expunged;

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

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

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

28 (8) the Kansas lottery, and the request is accompanied by a statement
29 that the request is being made to aid in determining qualifications for
30 employment with the Kansas lottery or for work in sensitive areas within
31 the Kansas lottery as deemed appropriate by the executive director of the
32 Kansas lottery;

33 (9) the governor or the Kansas racing and gaming commission, or a
34 designee of the commission, and the request is accompanied by a
35 statement that the request is being made to aid in determining
36 qualifications for executive director of the commission, for employment
37 with the commission, for work in sensitive areas in parimutuel racing as
38 deemed appropriate by the executive director of the commission or for
39 licensure, renewal of licensure or continued licensure by the commission;

40 (10) the Kansas racing and gaming commission, or a designee of the
41 commission, and the request is accompanied by a statement that the
42 request is being made to aid in determining qualifications of the following
43 under the Kansas expanded lottery act: (A) Lottery gaming facility

1 managers and prospective managers, racetrack gaming facility managers
2 and prospective managers, licensees and certificate holders; and (B) their
3 officers, directors, employees, owners, agents and contractors;

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

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

15 (13) the attorney general, and the request is accompanied by a
16 statement that the request is being made to aid in determining
17 qualifications for a license to carry a concealed weapon pursuant to the
18 personal and family protection act;

19 (14) the Kansas sentencing commission;

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

24 (16) a law enforcement agency and the request is accompanied by a
25 statement that the request is being made to aid in determining eligibility
26 for employment as a law enforcement officer as defined by K.S.A. 22-
27 2202, and amendments thereto.

28 Sec. 2-3. K.S.A. 2014 Supp. 21-6614 is hereby amended to read as
29 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d),
30 (e) and (f), any person convicted in this state of a traffic infraction,
31 cigarette or tobacco infraction, misdemeanor or a class D or E felony, or
32 for crimes committed on or after July 1, 1993, ~~nondrug crimes any~~
33 *nongrid felony or felony* ranked in severity levels 6 through 10 *of the*
34 *nondrug grid*, or for crimes committed on or after July 1, 1993, but prior to
35 July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for
36 crimes committed on or after July 1, 2012, any felony ranked in severity
37 level 5 of the drug grid may petition the convicting court for the
38 expungement of such conviction or related arrest records if three or more
39 years have elapsed since the person: (A) Satisfied the sentence imposed; or
40 (B) was discharged from probation, a community correctional services
41 program, parole, postrelease supervision, conditional release or a
42 suspended sentence.

43 (2) Except as provided in subsections (b), (c), (d), (e) and (f), any

1 person who has fulfilled the terms of a diversion agreement may petition
2 the district court for the expungement of such diversion agreement and
3 related arrest records if three or more years have elapsed since the terms of
4 the diversion agreement were fulfilled.

5 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
6 3512, prior to its repeal, convicted of a violation of K.S.A. 2014 Supp. 21-
7 6419, and amendments thereto, or who entered into a diversion agreement
8 in lieu of further criminal proceedings for such violation, may petition the
9 convicting court for the expungement of such conviction or diversion
10 agreement and related arrest records if:

11 (1) One or more years have elapsed since the person satisfied the
12 sentence imposed or the terms of a diversion agreement or was discharged
13 from probation, a community correctional services program, parole,
14 postrelease supervision, conditional release or a suspended sentence; and

15 (2) such person can prove they were acting under coercion caused by
16 the act of another. For purposes of this subsection, "coercion" means:
17 Threats of harm or physical restraint against any person; a scheme, plan or
18 pattern intended to cause a person to believe that failure to perform an act
19 would result in bodily harm or physical restraint against any person; or the
20 abuse or threatened abuse of the legal process.

21 (c) Except as provided in subsections (e) and (f), no person may
22 petition for expungement until five or more years have elapsed since the
23 person satisfied the sentence imposed or the terms of a diversion
24 agreement or was discharged from probation, a community correctional
25 services program, parole, postrelease supervision, conditional release or a
26 suspended sentence, if such person was convicted of a class A, B or C
27 felony, or for crimes committed on or after July 1, 1993, if convicted of an
28 off-grid felony or any ~~non-drug-crime~~ *felony* ranked in severity levels 1
29 through 5 *of the non-drug grid*, or for crimes committed on or after July 1,
30 1993, but prior to July 1, 2012, any felony ranked in severity levels 1
31 through 3 of the drug grid, or for crimes committed on or after July 1,
32 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

33 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
34 repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto, or as
35 prohibited by any law of another state which is in substantial conformity
36 with that statute;

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

42 (3) perjury resulting from a violation of K.S.A. 8-261a, and
43 amendments thereto, or resulting from the violation of a law of another

1 state which is in substantial conformity with that statute;

2 (4) violating the provisions of ~~the fifth clause of~~ K.S.A. 8-142^{*Fifth*},
3 and amendments thereto, relating to fraudulent applications or violating
4 the provisions of a law of another state which is in substantial conformity
5 with that statute;

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

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

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

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

15 (d) **(1)** No person may petition for expungement until ~~seven~~ *five* or
16 more years have elapsed since the person satisfied the sentence imposed or
17 the terms of a diversion agreement or was discharged from probation, a
18 community correctional services program, parole, postrelease supervision,
19 conditional release or a suspended sentence, if such person was convicted
20 of a **first** violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and
21 amendments thereto, including any diversion for such violation.

22 **(2)** *No person may petition for expungement until 10 or more years*
23 *have elapsed since the person satisfied the sentence imposed or was*
24 *discharged from probation, a community correctional services program,*
25 *parole, postrelease supervision, conditional release or a suspended*
26 *sentence, if such person was convicted of a second or subsequent*
27 *violation of K.S.A. 8-1567 or K.S.A. 2014 Supp. 8-1025, and*
28 *amendments thereto.*

29 (e) There shall be no expungement of convictions for the following
30 offenses or of convictions for an attempt to commit any of the following
31 offenses:

32 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
33 2014 Supp. 21-5503, and amendments thereto;

34 (2) indecent liberties with a child or aggravated indecent liberties
35 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
36 or K.S.A. 2014 Supp. 21-5506, and amendments thereto;

37 (3) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of~~
38 K.S.A. 21-3505~~(a)(2) or (a)(3)~~, prior to its repeal, or ~~subsection (a)(3) or~~
39 ~~(a)(4) of~~ K.S.A. 2014 Supp. 21-5504~~(a)(3) or (a)(4)~~, and amendments
40 thereto;

41 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
42 to its repeal, or K.S.A. 2014 Supp. 21-5504, and amendments thereto;

43 (5) indecent solicitation of a child or aggravated indecent solicitation

1 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
2 or K.S.A. 2014 Supp. 21-5508, and amendments thereto;

3 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
4 to its repeal, or K.S.A. 2014 Supp. 21-5510, and amendments thereto;

5 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
6 repeal, or K.S.A. 2014 Supp. 21-5604, and amendments thereto;

7 (8) endangering a child or aggravated endangering a child, as defined
8 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2014 Supp.
9 21-5601, and amendments thereto;

10 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
11 or K.S.A. 2014 Supp. 21-5602, and amendments thereto;

12 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
13 or K.S.A. 2014 Supp. 21-5401, and amendments thereto;

14 (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to
15 its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto;

16 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
17 to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto;

18 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
19 its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto;

20 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
21 its repeal, or K.S.A. 2014 Supp. 21-5405, and amendments thereto;

22 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
23 or K.S.A. 2014 Supp. 21-5505, and amendments thereto, when the victim
24 was less than 18 years of age at the time the crime was committed;

25 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
26 its repeal, or K.S.A. 2014 Supp. 21-5505, and amendments thereto;

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

29 (18) any conviction for any offense in effect at any time prior to July
30 1, 2011, that is comparable to any offense as provided in this subsection.

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

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

41 (A) Defendant's full name;

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

- 1 (C) defendant's sex, race and date of birth;
2 (D) crime for which the defendant was arrested, convicted or
3 diverted;
4 (E) date of the defendant's arrest, conviction or diversion; and
5 (F) identity of the convicting court, arresting law enforcement
6 authority or diverting authority.

7 (2) Except as otherwise provided by law, a petition for expungement
8 shall be accompanied by a docket fee in the amount of ~~\$100~~ *\$176*. On and
9 after July 1, 2013, through July 1, 2015, the supreme court may impose a
10 charge, not to exceed \$19 per case, to fund the costs of non-judicial
11 personnel. The charge established in this section shall be the only fee
12 collected or moneys in the nature of a fee collected for the case. Such
13 charge shall only be established by an act of the legislature and no other
14 authority is established by law or otherwise to collect a fee.

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

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

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

26 (2) the circumstances and behavior of the petitioner warrant the
27 expungement; and

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

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

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

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

43 (A) In any application for licensure as a private detective, private

1 detective agency, certification as a firearms trainer pursuant to K.S.A.
2 2014 Supp. 75-7b21, and amendments thereto, or employment as a
3 detective with a private detective agency, as defined by K.S.A. 75-7b01,
4 and amendments thereto; as security personnel with a private patrol
5 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
6 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
7 the Kansas department for aging and disability services;

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

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

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

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

25 (F) upon application for a commercial driver's license under K.S.A.
26 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

37 (K) for applications received on and after July 1, 2006, to aid in
38 determining the petitioner's qualifications for a license to carry a concealed
39 weapon pursuant to the personal and family protection act, K.S.A. 2014
40 Supp. 75-7c01 et seq., and amendments thereto;

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

43 (4) the conviction may be disclosed in a subsequent prosecution for

1 an offense which requires as an element of such offense a prior conviction
2 of the type expunged; and

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

7 (j) Whenever a person is convicted of a crime, pleads guilty and pays
8 a fine for a crime, is placed on parole, postrelease supervision or
9 probation, is assigned to a community correctional services program, is
10 granted a suspended sentence or is released on conditional release, the
11 person shall be informed of the ability to expunge the arrest records or
12 conviction. Whenever a person enters into a diversion agreement, the
13 person shall be informed of the ability to expunge the diversion.

14 (k) (1) Subject to the disclosures required pursuant to subsection (i),
15 in any application for employment, license or other civil right or privilege,
16 or any appearance as a witness, a person whose arrest records, conviction
17 or diversion of a crime has been expunged under this statute may state that
18 such person has never been arrested, convicted or diverted of such crime.

19 (2) Notwithstanding the provisions of subsection (k)(1), and except as
20 provided in ~~subsection (a)(3)(A)~~ of K.S.A. 2014 Supp. 21-6304(a)(3)(A),
21 and amendments thereto, the expungement of a prior felony conviction
22 does not relieve the individual of complying with any state or federal law
23 relating to the use, shipment, transportation, receipt or possession of
24 firearms by persons previously convicted of a felony.

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

30 (1) The person whose record was expunged;

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

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

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

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

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

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

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

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

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

29 (11) the Kansas sentencing commission;

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

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

41 (14) the Kansas commission on peace officers' standards and training
42 and the request is accompanied by a statement that the request is being
43 made to aid in determining certification eligibility as a law enforcement

1 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

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

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

10 (17) the Kansas bureau of investigation for the purposes of:

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

14 (B) providing information or documentation to the federal bureau of
15 investigation, in connection with the national instant criminal background
16 check system, to determine a person's qualification to possess a firearm.

17 (m) The provisions of subsection (l)(17) shall apply to records
18 created prior to, on and after July 1, 2011.

19 ~~Sec. 3, {4.}~~ K.S.A. 2014 Supp. ~~{8-241,}~~ 12-4516, 12-4516b, 21-6614
20 and 21-6614e are hereby repealed.

21 ~~Sec. 4, {5.}~~ This act shall take effect and be in force from and after its
22 publication in the statute book.