

## HOUSE BILL No. 2798

AN ACT enacting the personal and family protection act; providing for licensure to carry certain concealed weapons; prohibiting certain acts and prescribing penalties for violations; amending K.S.A. 12-4516 and K.S.A. 2003 Supp. 21-4201 and 21-4619 and repealing the existing sections.

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

New Section 1. Sections 1 through 18, and amendments thereto, shall be known and may be cited as the personal and family protection act.

New Sec. 2. As used in the personal and family protection act:

- (a) "Attorney general" means the attorney general of the state of Kansas.
- (b) "Weapon" means handgun, pistol or revolver.

New Sec. 3. (a) On and after January 1, 2005, the attorney general shall issue licenses to carry concealed weapons to persons qualified as provided by this act. Such licenses shall be valid throughout the state for a period of four years from the date of issuance.

(b) The license, at the option of the licensee: (1) Shall be a separate card, in a form prescribed by the attorney general, that is approximately the size of a Kansas driver's license and shall bear the licensee's signature, name, address, date of birth and driver's license number or nondriver's identification card number; or (2) shall be noted on the licensee's valid Kansas driver's license or valid Kansas nondriver's identification license or card. At all times when the licensee is in actual possession of a concealed weapon, the licensee shall carry the license to carry concealed weapons or a valid Kansas driver's license or Kansas nondriver's identification card with the license to carry a concealed weapon noted thereon, which shall constitute the license to carry a concealed weapon. On demand of a law enforcement officer, the licensee shall display the license to carry a concealed weapon and proper identification unless such license is noted on the person's driver's license or nondriver's identification card. Verification by a law enforcement officer that a person holds a valid license to carry a concealed weapon may be accomplished by a record check using the person's vehicle tag and driver's license information.

Violation of the provisions of this subsection shall constitute a class B nonperson misdemeanor.

(c) A valid license, issued by any other state or the District of Columbia, to carry concealed weapons shall be recognized according to the terms of such license but only while the holder is not a resident of Kansas.

The provisions of this subsection shall take effect and be in force from and after January 1, 2005.

New Sec. 4. (a) On and after January 1, 2005, the attorney general shall issue a license pursuant to this act if the applicant:

- (1) Is a resident of the county where application for licensure is made and has been a resident of the state for six months or more immediately preceding the filing of the application;
- (2) is 21 years or more of age;
- (3) does not suffer from a physical infirmity which prevents the safe handling of a weapon;
- (4) has never been convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a felony under the laws of this state or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a felony under the laws of this state if committed by an adult;
- (5) has not been, during the five years immediately preceding the date the application is submitted: (A) A mentally ill person or involuntary patient, as defined in K.S.A. 59-2946, and amendments thereto; (B) an alcoholic, as defined in K.S.A. 65-4003, and amendments thereto; (C) a drug abuser, as defined in K.S.A. 65-5201, and amendments thereto; (D) committed for the abuse of a controlled substance; (E) convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a felony or misdemeanor under the provisions of the uniform controlled substances act or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a misdemeanor under such act if committed by an adult; (F) committed for the abuse of alcohol; (G) convicted or placed on diversion, in this or any other jurisdiction, two or more times for an act that constitutes a violation of K.S.A. 8-1567, and amendments thereto; (H) convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a domestic violence misdemeanor under article 34 or 35 of chapter 21 of the Kansas Statutes Annotated or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a domestic violence misdemeanor under article 34 or 35 of chapter 21 of the Kansas Statutes Annotated if committed by an adult; or (I) convicted or placed on diversion, in this or any other jurisdiction, for an act that constitutes a violation of section 12, and amendments thereto, or a violation of subsection (a)(4) of K.S.A. 21-4201, and amendments thereto, or adjudicated, in this or any other jurisdiction, of committing as a juvenile an act that would be a violation of section 12 or a violation of subsection (a)(4) of K.S.A. 21-4201, and amendments thereto, if committed by an adult;
- (6) desires a legal means to carry a concealed weapon for lawful self-defense;
- (7) except as provided by subsection (f) of section 5, and amendments thereto, presents evidence satisfactory to the attorney general that the applicant has satisfactorily completed a weapons safety and training course approved by the attorney general pursuant to subsection (b);
- (8) has not been adjudged a disabled person under the act for obtaining a guardian or conservator, or both, or under a similar law of another state or the District of Columbia, unless the applicant was ordered restored to capacity three or more years before the date on which the application is submitted;
- (9) has not been dishonorably discharged from military service;
- (10) is a citizen of the United States;
- (11) is not subject to a restraining order issued under the protection from abuse act, under the protection from stalking act or pursuant to K.S.A. 60-1607, 38-1542, 38-1543 or 38-1563, and amendments thereto, or any equivalent order entered in another state or jurisdiction which is entitled to full faith and credit in Kansas; and

(12) is not in contempt of court in a child support proceeding.

(b) (1) The attorney general shall adopt rules and regulations establishing procedures and standards as authorized by this act for an eight-hour weapons safety and training course required by this section. Such standards shall include: (A) A requirement that trainees receive training in the safe storage of weapons, actual firing of weapons and instruction in the laws of this state governing the carrying of a concealed weapon and the use of deadly force; (B) general guidelines for courses which are compatible with the industry standard for basic firearms training for civilians; (C) qualifications of instructors; and (D) a requirement that the course be: (i) A weapons course certified or sponsored by the attorney general; or (ii) a weapons course certified or sponsored by the national rifle association or by a law enforcement agency, college, private or public institution or organization or weapons training school, if the attorney general determines that such course meets or exceeds the standards required by rules and regulations adopted by the attorney general and is taught by instructors certified by the attorney general or by the national rifle association, if the attorney general determines that the requirements for certification of instructors by such association meet or exceed the standards required by rules and regulations adopted by the attorney general.

(2) The cost of the weapons safety and training course required by this section shall be paid by the applicant. The following shall constitute satisfactory evidence of satisfactory completion of an approved weapons safety and training course: (A) Evidence of completion of the course, in the form provided by rules and regulations adopted by the attorney general; or (B) an affidavit from the instructor, school, club, organization or group that conducted or taught such course attesting to the completion of the course by the applicant.

(c) In addition to the requirements of subsection (a), a person holding a license pursuant to this act, prior to renewal of the license provided herein, shall submit evidence satisfactory to the attorney general that the licensee has requalified by completion of an approved course given by an instructor of an approved weapons safety and training course under subsection (b).

New Sec. 5. (a) The application for a license pursuant to this act shall be completed, under oath, on a form prescribed by the attorney general and shall only include:

(1) The name, address, social security number, place and date of birth, and occupation of the applicant;

(2) a statement that the applicant is in compliance with criteria contained within section 4, and amendments thereto;

(3) a waiver of the confidentiality of such mental health and medical records as necessary to determine the applicant's qualifications under subsection (a)(5) of section 4, and amendments thereto;

(4) a statement that the applicant has been furnished a copy of this act and is knowledgeable of its provisions;

(5) a conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under K.S.A. 21-3805, and amendments thereto; and

(6) a statement that the applicant desires a concealed weapon license as a means of lawful self-defense.

(b) The applicant shall submit to the sheriff of the county where the applicant resides, during any normal business hours:

(1) A completed application described in subsection (a);

(2) except as provided by subsection (f), a nonrefundable license fee not to exceed \$150, if the applicant has not previously been issued a statewide license or if the applicant's license has permanently expired;

(3) a photocopy of a certificate or an affidavit or document as described in subsection (b) of section 4, and amendments thereto; and

(4) a full frontal view photograph of the applicant taken within the preceding 30 days.

(c) (1) The sheriff, upon receipt of the items listed in subsection (b) of this section or subsection (a) of section 8, and amendments thereto, shall provide for the full set of fingerprints of the applicant to be taken and forwarded to the attorney general for purposes of a criminal history records check as provided by subsection (d). In addition, the sheriff shall forward a copy of the application and \$110 of the original license fee, or \$50 of the renewal license fee, to the attorney general. The cost of taking such fingerprints shall be included in the portion of the fee retained by the sheriff.

(2) The sheriff of the applicant's county of residence, at the sheriff's discretion, may participate in the process by submitting a voluntary report to the attorney general containing readily discoverable information, corroborated through public records, which, when combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. Any such voluntary reporting shall be made within 45 days after the date the sheriff receives the application. Any sheriff or law enforcement officer submitting a voluntary report shall not incur any civil or criminal liability as the result of the good faith submission of such report.

(3) All funds retained by the sheriff pursuant to the provisions of this section shall be deposited in the general fund of the county and shall be budgeted to the use of the sheriff's office.

(d) Each applicant shall be subject to a state and national criminal history records check which conforms to applicable federal standards for the purpose of verifying the identity of the applicant and whether the applicant has been convicted of any crime that would disqualify the applicant from holding a license under this act. The attorney general is authorized to use the information obtained from the national criminal history record check to determine the applicant's eligibility for such license.

(e) Within 180 days after the date of receipt of the items listed in subsection (b), for applications received before July 1, 2005, and within 90 days after the date of receipt of the items listed in subsection (b), for applications received on or after July 1, 2005, the attorney general shall:

(1) Issue the license; or

(2) deny the application based solely on: (A) The report submitted by the sheriff under subsection (c)(2) for good cause shown therein; or (B) the ground that the applicant fails to qualify under the criteria listed in section 4, and amendments thereto. If the attorney general denies the application, the attorney general shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to the Kansas administrative procedure act.

(f) A person who is a retired law enforcement officer, as defined in K.S.A. 21-3110, and amendments thereto, shall be: (1) Exempt from the original license fee; (2) exempt from the required completion of a weapons safety and training course if such person was certified by the Kansas law enforcement training commission not more than eight years prior to submission of the application; (3) required to pay the license renewal fee; and (4) required to comply with the criminal history records check requirement of this section.

New Sec. 6. (a) The attorney general shall maintain an automated listing of license holders and pertinent information, and such information shall be available, upon request, at all times to all law enforcement agencies in this state, other states and the District of Columbia.

(b) Within 30 days after the changing of a permanent address, or within 30 days after having a license lost or destroyed, the licensee shall notify the attorney general of such change, loss or destruction. The attorney general, upon notice and hearing, may order a licensee to pay a fine of not more than \$100, or may suspend the licensee's license for not more than 180 days, for failure to notify the attorney general pursuant to the provisions of this subsection.

(c) In the event that a concealed weapon license is lost or destroyed, the license shall be automatically invalid, and the person to whom the license was issued, upon payment of \$15 to the attorney general, may obtain a duplicate, or substitute thereof, upon furnishing a notarized statement to the attorney general that such license has been lost or destroyed.

New Sec. 7. The attorney general shall suspend or revoke at any time the license of any person who would be ineligible under section 4, and amendments thereto, if submitting an application for a license at such time or who fails to submit evidence of completion of a weapons safety and training course as required by subsection (c) of section 4, and amendments thereto. The suspension or revocation shall be subject to review by the district court in accordance with the act for judicial review and civil enforcement of agency actions. The suspension or revocation shall remain in effect pending any appeal and shall not be stayed by the court.

New Sec. 8. (a) Not less than 90 days prior to the expiration date of the license, the attorney general shall mail to the licensee a written notice of the expiration and a renewal form prescribed by the attorney general. The licensee shall renew the license on or before the expiration date by filing with the sheriff of the applicant's county of residence the renewal form, a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in section 4, and amendments thereto, a full frontal view photograph of the applicant taken within the preceding 30 days and a nonrefundable license renewal fee not to exceed \$100. The license shall be renewed upon receipt of the completed renewal application and appropriate payment of fees. A licensee who fails to file a renewal application on or before the expiration date of the license must pay an additional late fee of \$15.

(b) If the licensee is qualified as provided by this act, the license shall be renewed upon receipt by the attorney general of the items listed in subsection (a).

(c) No license shall be renewed six months or more after the expiration date of the license, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure but an application for licensure and fees pursuant to section 5, and amendments thereto, shall be submitted, and a background investigation shall be conducted pursuant to the provisions of that section.

New Sec. 9. The application form for an original license and for a renewal license shall include, in a conspicuous place, the following: "WARNING: A false statement on this application may subject the applicant to prosecution for the crime of perjury (K.S.A. 21-3805, and amendments thereto)."

New Sec. 10. (a) No license issued pursuant to this act shall authorize the licensee to carry a concealed weapon into:

- (1) Any place where an activity declared a common nuisance by K.S.A. 22-3901, and amendments thereto, is maintained;
- (2) any police, sheriff or highway patrol station;
- (3) any detention facility, prison or jail;
- (4) any courthouse;
- (5) any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in the judge's courtroom;
- (6) any polling place on the day an election is held;
- (7) any meeting of the governing body of a county, city or other political or taxing subdivision of the state, or any committee or subcommittee thereof;
- (8) on the state fairgrounds;
- (9) or any state office building;
- (10) any athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education;
- (11) any professional athletic event not related to or involving firearms;
- (12) any portion of a drinking establishment as defined by K.S.A. 41-2601, and amendments thereto, except that this provision shall not apply to a restaurant as defined by K.S.A. 41-2601, and amendments thereto;
- (13) any elementary or secondary school building or structure used for student instruction or attendance;
- (14) any community college, college or university facility;
- (15) any place where the carrying of firearms is prohibited by federal or state law;

(16) any child exchange and visitation center provided for in K.S.A. 75-720, and amendments thereto;

(17) any community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto; mental health clinic organized pursuant to K.S.A. 65-211 et seq., and amendments thereto; psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto; or state psychiatric hospital, as follows: Larned state hospital, Osawatomic state hospital or Rainbow mental health facility; or

(18) any city hall.

(b) Violation of this section is a class A misdemeanor.

New Sec. 11. (a) Nothing in this act shall be construed to prevent:

(1) Any public or private employer from restricting or prohibiting in any manner persons licensed under this act from carrying a concealed weapon while on the premises of the employer's business or while engaged in the duties of the person's employment by the employer; or

(2) any entity owning or operating business premises open to the public from restricting or prohibiting in any manner persons licensed under this act from carrying a concealed weapon while on such premises, provided that the premises are posted, in a manner reasonably likely to come to the attention of persons entering the premises, as premises where carrying a concealed weapon is prohibited; or

(3) a property owner from restricting or prohibiting in any manner persons licensed under this act from carrying a concealed weapon while on such property, provided that the premises are posted, in a manner reasonably likely to come to the attention of persons entering the property where carrying a concealed weapon is prohibited.

(b) Violation of this section is a class B misdemeanor.

New Sec. 12. It is a class A nonperson misdemeanor for a person licensed pursuant to this act to carry a concealed weapon while under the influence of alcohol or drugs, or both.

New Sec. 13. (a) All moneys received by the attorney general pursuant to this act shall be remitted to the state treasurer who shall deposit the entire amount in the state treasury and credit it to the concealed weapon licensure fund, which is hereby created in the state treasury.

(b) Moneys in the concealed weapon licensure fund shall be used only for: (1) Payment of the expenses of administration of the personal and family protection act; and (2) transfers to the county law enforcement equipment fund and to the forensic laboratory and materials fee fund as provided by subsection (e).

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the concealed weapon licensure fund the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a, and amendments thereto, that is attributable to moneys in the concealed weapon licensure fund. Such amount of money shall be determined by the pooled money investment board based on: (1) The average daily balance of moneys in the concealed weapon licensure fund for the preceding month; and (2) the net earnings for the pooled money investment portfolio for the preceding month.

(d) All expenditures from the concealed weapon licensure fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general for the purposes set forth in this section.

(e) The attorney general shall certify to the director of accounts and reports on each July 1 and January 1 after moneys are first credited to the concealed weapons licensure fund the amount of moneys in such fund needed to administer this act. On or before the 15th day of each month after moneys are first credited to the concealed weapons licensure fund, the director of accounts and reports shall transfer moneys in the concealed weapons licensure fund as follows: (1) Of the amount in excess of the amount certified by the attorney general, 20% shall be credited to the county law enforcement equipment fund; and (2) the remaining 80% shall be credited to a separate account in the forensic laboratory and materials fee fund cited in K.S.A. 28-176, and amendments thereto, to be used solely to assist city and county law enforcement agencies to obtain prompt laboratory services from the bureau. Moneys credited to the forensic laboratory and materials fee fund as provided by this subsection shall be used to supplement existing appropriations and shall not be used to supplant general fund appropriations to the attorney general.

New Sec. 14. (a) There is hereby created in the state treasury the county law enforcement equipment fund.

(b) Moneys in the county law enforcement equipment fund shall be used only to fund grants to sheriffs' departments for purchases of law enforcement equipment other than motor vehicles. Such grants shall be administered by the attorney general. Such grants shall be based on applications submitted by sheriffs' departments that demonstrate the need for the equipment for which the grant is sought and substantiate that grant moneys will not be used to supplant existing funding of the recipient sheriff's department.

(c) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the county law enforcement equipment fund interest earnings based on: (1) The average daily balance of moneys in the county law enforcement equipment fund for the preceding month; and (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the county law enforcement equipment fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general for the purposes set forth in this section.

New Sec. 15. The committee on surety bonds and insurance, within the limitations of appropriations made therefor, shall purchase such liability insurance as it deems necessary for the protection of persons engaged in conducting an approved weapons safety and training

course against any liability for injuries or damages arising from the conducting of such course of instruction by such persons.

New Sec. 16. (a) The attorney general shall adopt such rules and regulations as necessary to administer the provisions of this act.

(b) On or before January 1 of each year, the attorney general shall submit a statistical report to the governor, president of the senate, the senate minority leader, the speaker of the house of representatives and the house minority leader indicating the number of licenses issued, revoked, suspended and denied during the preceding fiscal year.

New Sec. 17. (a) The legislature finds as a matter of public policy and fact that it is necessary to provide statewide uniform standards for issuing licenses to carry concealed weapons for self-defense and finds it necessary to occupy the field of regulation of the bearing of concealed weapons for self-defense to ensure that no honest, law-abiding person who qualifies under the provisions of this act is subjectively or arbitrarily denied the person's rights. Any city ordinance or county resolution that regulates, restricts or prohibits the carrying of concealed weapons shall not be applicable to any person licensed in accordance with the provisions of this act.

(b) The legislature does not delegate to the attorney general the authority to regulate or restrict the issuing of licenses provided for in this act, beyond those provisions of this act pertaining to licensing and training. Subjective or arbitrary actions or rules and regulations which encumber the issuing process by placing burdens on the applicant beyond those sworn statements and specified documents detailed in this act or which create restrictions beyond those specified in this act are in conflict with the intent of this act and are prohibited.

(c) This act shall be liberally construed. This act is supplemental and additional to existing constitutional rights to bear arms and nothing in this act shall impair or diminish such rights.

New Sec. 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

Sec. 19. K.S.A. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

- (A) Satisfied the sentence imposed; or
- (B) was discharged from probation, parole or a suspended sentence.

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

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

- (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto;
- (2) a violation of K.S.A. 8-1567, and amendments thereto;
- (3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;
- (4) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;
- (5) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;
- (6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;
- (7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;
- (8) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or
- (9) a violation of K.S.A. 21-3405b, and amendments thereto.

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

- (2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (3) the defendant's sex, race and date of birth;
- (4) the crime for which the defendant was arrested, convicted or diverted;
- (5) the date of the defendant's arrest, conviction or diversion; and
- (6) the identity of the convicting court, arresting law enforcement agency or diverting authority.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

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

- (1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
- (2) the circumstances and behavior of the petitioner warrant the expungement; and
- (3) the expungement is consistent with the public welfare.

(e) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition.

The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

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

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

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

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

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

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

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

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

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

(H) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-1252 and amendments thereto; or

(I) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

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

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

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

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

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

(1) The person whose record was expunged;

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

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

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

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

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

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

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

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by

the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

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

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

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

Sec. 20. K.S.A. 2003 Supp. 21-4201 is hereby amended to read as follows: 21-4201. (a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement;

(2) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument;

(3) carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(4) carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(5) setting a spring gun;

(6) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(7) selling, manufacturing, purchasing, possessing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger; or

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight.

(b) Subsections (a)(1), (2), (3), (4) and (7) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1), (2) and (3) to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or

(6) special deputy sheriffs described in K.S.A. 2003 Supp. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(d) Subsections (a)(1), (6) and (7) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 *et seq.* in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(8) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(6) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer's law enforcement agency to possess devices described in subsection (a)(6); and

(3) in possession of commercially manufactured devices which are: (A) Owned by the law enforcement agency; (B) in such officer's possession only during specific operations; and (C) approved by the bureau of alcohol, tobacco and firearms of the United States department of justice.

~~(g)~~ (h) *Subsection (a)(4) shall not apply to any person carrying a concealed weapon as authorized by sections 1 through 17, and amendments thereto.*

~~(g)~~ (h) It shall be a defense that the defendant is within an exemption.

~~(h)~~ (i) Violation of subsections (a)(1) through (a)(5) is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a severity level 9, nonperson felony.

~~(i)~~ (j) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

Sec. 21. K.S.A. 2003 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

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

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

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

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

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

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

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

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

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

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

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

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto; (12) capital murder as defined in K.S.A. 21-3439 and amendments thereto; (13) murder in the first degree as defined in K.S.A. 21-3401 and amendments thereto; (14) murder in the second degree as defined in K.S.A. 21-3402 and amendments thereto; (15) voluntary manslaughter as defined in K.S.A. 21-3403 and amendments thereto; (16) involuntary manslaughter as defined in K.S.A. 21-3404 and amendments thereto; (17) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 2003 Supp. 21-3442 and amendments thereto; (18) sexual battery as defined in K.S.A. 21-3517 and amendments thereto; (19) aggravated sexual battery as defined in K.S.A. 21-3518 and amendments thereto; or (20) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

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



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

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

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

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

(6) the identity of the convicting court, arresting law enforcement authority or diverting authority. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

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

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

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

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

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

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

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

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2003 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

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

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

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

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

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

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

(H) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-1252 and amendments thereto; or

(I) in any application for a commercial guide permit or associate guide permit under K.S.A. 32-964, and amendments thereto; or

(J) to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

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

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

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

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

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

(i) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute,

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

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;
- (10) the Kansas sentencing commission;
- (11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;
- (12) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged; or
- (13) the department of wildlife and parks and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a permit as a commercial guide or associate guide under K.S.A. 32-964, and amendments thereto; or
- (14) *the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act.*

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Sec. 22. K.S.A. 12-4516 and K.S.A. 2003 Supp. 21-4201 and 21-4619 are hereby repealed.

Sec. 23. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*

## **Governor Sebelius' Veto Message for House Bill 2798:**

I support Kansans' Second Amendment rights. I support the Kansas Constitution, which also protects the people's right to bear arms. I believe in every American's right to own and keep firearms. As a woman who has lived and raised children in an urban area, I understand the need for personal safety and self-defense.

But as Governor, I must consider what will make Kansans safer overall. I do not believe the widespread legalization of concealed firearms that House Bill 2798 would allow would make Kansans safer. I do not believe allowing people to carry concealed handguns into sporting events, shopping malls, grocery stores, or the workplace would be good public policy. And, to me, the likelihood of exposing children to loaded handguns in their parents' purses, pockets, and automobiles is simply unacceptable.

Perhaps most troubling, though, is the untenable position in which House Bill 2798 would place law enforcement. If House Bill 2798 became law, police officers, highway patrolmen, sheriffs, and deputies in Kansas would be forced to assume that any person they stop could have a firearm. This would make their already dangerous job even more difficult.

This has been my position for many years, and I remain committed to it. I would sign a bill that allowed retired law enforcement officers to carry concealed weapons. Anything further, however, would undermine the safety and freedom of all Kansans.

For these reasons, I veto House Bill 2798.

Dated April 16, 2004.

KATHLEEN SEBELIUS  
*Governor*