

Journal of the Senate

SIXTEENTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Tuesday, February 5, 2008—2:30 p.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-four senators present.
Senators Barone, Betts, Goodwin, Haley, Huelskamp and Jordan were excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Super Tuesday has arrived;
Twenty-two states involved;
Some believe the nominees
Will probably be solved.

There may be Republicans who are sure
If a Democrat is elected,
The nation will go down the tubes
And righteousness rejected.

There may be Democrats just as sure
If a Republican is elected,
The world will be at war again,
And freedom unprotected.

In New Testament days the world was ruled
By an Emperor in Rome.
Freedom was non-existent,
And righteousness unknown.

Yet in those days the Apostle Paul
Said that all authority
Ruled only by your permission, Lord,
And that's how it will be.

Of course I have a preference, Lord,
But whoever is the elected one,
My preference is not the main concern,
But that Your will be done!

I pray in the Name of Jesus Christ,

AMEN

The Pledge of Allegiance was led by President Stephen Morris.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were introduced and read by title:

SB 543, An act concerning motor vehicles; relating to registration of such vehicles; residency; amending K.S.A. 8-1,138 and K.S.A. 2007 Supp. 8-129 and repealing the existing sections, by Committee on Transportation.

SB 544, An act concerning reduced ignition propensity cigarettes, by Committee on Federal and State Affairs.

SB 545, An act relating to civil procedure; concerning health insurance coverage information for children in divorce action; amending K.S.A. 2007 Supp. 60-1610 and repealing the existing section, by Committee on Judiciary.

SB 546, An act establishing a family dispute resolution fund; providing for grants; concerning docket fees; amending K.S.A. 20-367 and K.S.A. 2007 Supp. 60-1621 and repealing the existing sections, by Committee on Judiciary.

SB 547, An act enacting the oil and gas surface owner notice and compensation act, by Committee on Judiciary.

SB 548, An act relating to the department of health and environment; a school-based influenza vaccination pilot program; providing for a study, by Committee on Public Health and Welfare.

SB 549, An act relating to the board of pharmacy; concerning continuous quality improvement programs and nonresident pharmacy; amending K.S.A. 65-1657 and repealing the existing section, by Committee on Public Health and Welfare.

SB 550, An act concerning sales taxation; relating to cash rebates on sales or leases of new motor vehicles; amending K.S.A. 2007 Supp. 79-3602 and repealing the existing section, by Committee on Assessment and Taxation.

SB 551, An act concerning drivers' licenses; driving while suspended; amending K.S.A. 2007 Supp. 8-262 and repealing the existing section, by Senator Journey.

SB 552, An act relating to firearms; prohibiting the confiscation or seizure thereof; amending K.S.A. 48-925 and repealing the existing section, by Senator Journey.

SB 553, An act concerning the environment; relating to carbon dioxide emission offset, by Committee on Ways and Means.

SB 554, An act concerning a mural in the capitol, by Senators Hensley, Betts, Haley, Kelly and V. Schmidt.

SB 555, An act concerning rate increases for certain utilities under the jurisdiction of the state corporation commission; relating to notice to customers of such utilities; concerning the citizens' utility ratepayer board, by Committee on Utilities.

SB 556, An act concerning controlled substances; establishing the medical marijuana defense act, by Committee on Health Care Strategies.

SB 557, An act concerning the Kansas department of agriculture; amending K.S.A. 36-504 and 65-689 and K.S.A. 2007 Supp. 65-688, 74-581, 74-596, 74-597 and 74-598 and repealing the existing sections, by Committee on Agriculture.

SB 558, An act concerning irrigation districts; pertaining to the conduct of elections; amending K.S.A. 42-706 and repealing the existing section, by Senator Taddiken.

SB 559, An act concerning water supply and distribution districts; relating to acquisition of grounds; amending K.S.A. 19-3502, 19-3511 and 19-3552 and repealing the existing sections, by Committee on Agriculture.

SB 560, An act establishing the property/casualty flex-rating regulatory improvement act; pertaining to personal lines insurance written on risks in this state by any insurer authorized to do business in this state, by Committee on Financial Institutions and Insurance.

SB 561, An act concerning life insurance; pertaining to coverage limits on creditor/debtor group life insurance; amending K.S.A. 2007 Supp. 40-433 and repealing the existing section, by Committee on Financial Institutions and Insurance.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **SB 542**; **HB 2641**.

Financial Institutions & Insurance: **SB 535**.

Judiciary: **SB 536**, **SB 537**.

Natural Resources: **SB 538**.

Public Health and Welfare: **SB 540, SB 541.**
 Transportation: **HB 2071, HB 2622.**
 Ways and Means: **SB 534, SB 539.**

COMMUNICATIONS FROM STATE OFFICERS

REAP

January 15, 2008

In accordance with House Substitute for Senate Bill 475 and the omnibus appropriation bill, Senate Bill 2968, both enacted in the 2006 session of the Kansas Legislature, REAP submitted the Kansas Affordable Airfares Program report on the expenditures of the state annual grant and local matching monies under the program to date.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Division of Environment

January 31, 2008

Roderick L. Bremby, Secretary, submitted the Division's Annual Report.

The President announced the above reports are on file in the office of the Secretary of the Senate and are available for review at any time.

MESSAGE FROM THE HOUSE

Announcing passage of **HB 2683.**
 Also, passage of **SB 366**, as amended.

INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

HB 2683 was thereupon introduced and read by title.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Schodorf introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1809—

A RESOLUTION congratulating and commending the 2007 Kansas National Board Certified Teachers.

WHEREAS, Thirty-four of Kansas' finest educators have satisfied the highest professional qualifications of the National Board for Professional Teaching Standards to be designated as National Board Certified Teachers. They will be recognized as such at a program on February 21; and

WHEREAS, The 2007 Kansas National Board Certified Teachers are: Tanya Belcher, Linwood Elementary School, Wichita, USD 259; Garie Brownrigg, Garnett Elementary School, Garnett, USD 365; Karen Burrell, Wichita North High School, Wichita, USD 259; Heather Caswell, Village Elementary School, Emporia, USD 253; Gaye Coburn, Wichita North High School, Wichita, USD 259; Kelly Deters, Shawnee Heights High School, Shawnee Heights, USD 450; Terri Durgan, Quail Run Elementary School, Lawrence, USD 497; Janet Fansher, Overland Trail Elementary School, Blue Valley, USD 229; Kelly Frederick, Wichita North High School, Wichita, USD 259; Jeffery Freund, Wichita North High School, Wichita, USD 259; Jennifer Gessley, Overland Trail Elementary School, Blue Valley, USD 229; Tennele Hankins, Curtis Middle School, Wichita, USD 259; Angela Hedges, Olathe Northwest High School, Olathe, USD 233; Tiffany Hicks, Garfield Elementary School, Parsons, USD 503; Debra Hotujac, Cedar Hills Elementary School, Blue Valley, USD 229; Amber Jones, Wichita North High School, Wichita, USD 259; Paula Lane, Clay Center Community Middle School, Clay Center, USD 379; Suzanne Leikam, Roosevelt Elementary School, Hays, USD 489; Teresa Lindberg, Blue Valley West High School, Blue Valley, USD 229; Kimberley Liotta, Marlatt Elementary School, Manhattan-Ogden, USD 383; Mary Naumann, Jefferson West Middle School, Jefferson West, USD 340; Mitchell Piva, Garfield Elementary School, Parsons, USD 503; Dawn Quintanar, Marlatt Elementary School, Manhattan-Ogden, USD 383; John Ritchie, Wamego Middle School, Wamego, USD 320; Kari Ritter, Lundgren Elementary School, Topeka, USD 501;

Gayle Ross, Scarborough Elementary School, Olathe, USD 233; Donna Szymkowski, Lakewood Elementary School, Blue Valley, USD 229; Tara Thomas, Marlatt Elementary School, Manhattan-Ogden, USD 383; Michelle Thrower, Cedar Creek Elementary School, Olathe, USD 233; Barbara Williams, Wichita North High School, Wichita, USD 259; Rebekah Winter, Wichita South High School, Wichita, USD 259; Alyson Young, Blue Valley West High School, Blue Valley, USD 229; Patricia Zimmerman, Perry-Lecompton Middle School, Perry, USD 343; Shanna Zimmerman, Wichita East High School, Wichita, USD 259; and

WHEREAS, National Board Certification, a voluntary process established by the National Board for Professional Teaching Standards, is a symbol of professional teaching excellence. It is achieved through a performance-based assessment process that measures a teacher's practice against high and rigorous advanced standards to demonstrate accomplished practice. Through a series of assessments, teachers demonstrate their subject matter knowledge, provide evidence that they know how to teach their subjects to students most effectively, and demonstrate their ability to manage and measure student learning; and

WHEREAS, The National Board for Professional Teaching Standards is an independent, nonprofit, non-partisan and nongovernmental organization. Its mission is to advance the quality of teaching and learning by: Maintaining high and rigorous standards for what accomplished teachers should know and be able to do; providing a national voluntary system certifying teachers who meet these standards; and advocating related education reforms to integrate National Board Certification in American education and to capitalize on the expertise of National Board Certified Teachers: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend each of these outstanding educators who have attained the status of National Board Certified Teachers; and

Be it further resolved: That the Secretary of the Senate provide 34 enrolled copies of this resolution to the Commissioner of Education for forwarding to each of the teachers so honored plus a copy to the Commissioner of Education.

On emergency motion of Senator Schodorf **SR 1809** was adopted unanimously.

Senator Schodorf introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1810—

A RESOLUTION congratulating and commending the 2008 Horizon Award Program educators.

WHEREAS, Thirty-two beginning educators from across the state have been named as Kansas Horizon Award Program educators; and

WHEREAS, The Kansas Horizon Award Program, sponsored by the Kansas State Department of Education, identifies and recognizes representatives of excellent teaching in the elementary and secondary classrooms of the state. The mission of the Kansas Horizon Award Program is to recognize exemplary first-year teachers who perform in a way that distinguishes them as outstanding; and

WHEREAS, The Kansas Horizon Award Program, currently in its sixth year, allows all school districts in the state an opportunity to nominate one elementary and one secondary teacher for the award. To be eligible for a Kansas Horizon Award, teachers must have successfully completed their first year of teaching and have performed in such a way as to distinguish themselves as outstanding. The Kansas Horizon Award Program is a regional competition with four regions corresponding to the state's United States congressional districts. Four elementary and four secondary classroom teachers may be selected for the award from each district; and

WHEREAS, This year's recipients are:

Region 1: Lacy Cleveland, White City High School, Rural Vista, USD 481; Jessica Curl, McPherson High School, McPherson, USD 418; Jennifer Davis, Marysville Jr/Sr High School, Marysville, USD 364; Shane Heiman, Village Elementary School, Emporia, USD 253; Chris Michel, Heusner Elementary School, Salina, USD 305; Rebecca Schippers, Junction City High School, Geary County, USD 475; Jacqueline Schnell, Eisenhower

Elementary School, Great Bend, USD 428; Jennifer Stokely, Faris Elementary School, Hutchinson, USD 308; and

Region 2: Chris Daniels, Washburn Rural High School, Auburn-Washburn, USD 437; Matthew Herbert, Highland Park High School, Topeka, USD 501; Nichole Honeywell, Atchison Middle School, Atchison, USD 409; Joy McGhee, Winfield Scott Elementary School, Fort Scott, USD 234; Ryan Paget, Shawnee Heights High School, Shawnee Heights, USD 450; Chelsea Richmond, Burlingame Elementary School, Burlingame, USD 454; Molly Strathman, Hiawatha Elementary School, Hiawatha, USD 415; Kara Van Dyke, Atchison Elementary School, Atchison, USD 409; and

Region 3: Eileen Gorup, Blue Valley Middle School, Blue Valley, USD 229; Elizabeth Milam, Piper East Elementary School, Piper-Kansas City, USD 203; Erin Nichols, Edwardsville Elementary School, Edwardsville, USD 204; Katherine O'Toole, Sunflower Elementary School, Gardner Edgerton, USD 231; Sean Red Corn, Shawnee Mission West High School, Shawnee Mission, USD 512; Shara Reilly, Mize Elementary School, DeSoto, USD 232; Jennifer Schmidt, Gardner Edgerton High School, Gardner Edgerton, USD 231; Jason Springer, Lawrence Free State High School, Lawrence, USD 497; and

Region 4: Jill Augustyn, Cheney Middle School, Cheney, USD 268; Kristen Bender, Maize Elementary School, Maize, USD 266; Tamara Cassidy, Jefferson Elementary School, Arkansas City, USD 470; Effie Conway, Anderson Elementary School, Wichita, USD 259; Kristen Crank, Augusta Middle School, Augusta, USD 402; Philip Edelman, Goddard Middle School, Goddard, USD 265; Rob Klem, El Dorado High School, El Dorado, USD 490; Derrick Richling, Walton 21st Century Rural Life Charter, Newton, USD 373; Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the 2008 Kansas Horizon Award Program educators for outstanding performance in their chosen career; and

Be it further resolved: That the Secretary of the Senate provide 32 enrolled copies of this resolution to the Commissioner of Education for forwarding to each educator so honored plus one copy for the Commissioner of Education.

On emergency motion of Senator Vratil **SR 1810** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SB 430**, **SB 431**, **SB 432** be passed.

Also, **SB 301** be amended on page 1, by striking all in lines 14 through 43;

By striking all on pages 2 through 10;

On page 11, by striking all in lines 1 through 28;

Also on page 11, preceding line 29, by inserting the following:

“Section 1. K.S.A. 2007 Supp. 12-4516 is hereby amended to read as follows: 12-4516.

(a) (1) Except as provided in subsection (b) or (c), 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~~ *two* 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) or (c), 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) 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;

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

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

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

(6) 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;

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

(8) a violation of K.S.A. 21-3405b, and amendments thereto.

(c) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567 or 8-2,144, and amendments thereto.

(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 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.

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

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

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

(H) 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;

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

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

(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.

(g) 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.

(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 an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(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 and gaming 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 racing and gaming 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 of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(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-state 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;

(13) 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;

(14) the Kansas sentencing commission;

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

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

Sec. 2. K.S.A. 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~~ *two* 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) 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;

(3) 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;

(4) 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;

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

(6) 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;

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

(8) 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 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. 21-3442, and amendments thereto; (18) sexual battery as defined in K.S.A. 21-3517, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed; (19) aggravated sexual battery as defined in K.S.A. 21-3518, and amendments thereto; (20) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation; (21) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or (22) 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. 2007 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 and gaming 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) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

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

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

(H) 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;

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

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

(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 and gaming 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 racing and gaming 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 of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;
- (11) the Kansas sentencing commission;

(12) 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;

(13) 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;

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

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

(16) 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. 3. K.S.A. 21-4619 and K.S.A. 2007 Supp. 12-4516 are hereby repealed.”;

Also on page 11, by renumbering the remaining section accordingly;

In the title, in line 10, by striking “2006 Supp. 12-4516 and 12-4619” and inserting “21-4619 and K.S.A. 2007 Supp. 12-4516”; in line 11, by striking all following “sections” and inserting a period; and the bill be passed as amended.

On motion of Senator D. Schmidt the Senate adjourned until 2:30 p.m., Wednesday, February 6, 2008.

HELEN MORELAND, CHARLENE BAILEY, PAT MATZEK, *Journal Clerks*.

PAT SAVILLE, *Secretary of the Senate*.

