

HOUSE BILL No. 2391

By Committee on Federal and State Affairs

3-15

1 AN ACT concerning driving; relating to driving under the influence and
2 other driving offenses; authorized restrictions of driving privileges,
3 ignition interlock device; expungement of convictions and diversions;
4 amending K.S.A. 2016 Supp. 8-1015, 12-4516 and 21-6614 and
5 repealing the existing sections; also repealing K.S.A. 2016 Supp. 12-
6 4516e, 21-6614g and 21-6614h.
7

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

9 Section 1. K.S.A. 2016 Supp. 8-1015 is hereby amended to read as
10 follows: 8-1015. (a) (1) Except as provided in subsection (a)(2), whenever
11 a person's driving privileges have been suspended for one year as provided
12 in K.S.A. 8-1014(a), and amendments thereto, after 90 days of such
13 suspension, such person may apply to the division for such person's
14 driving privileges to be restricted for the remainder of the one-year
15 suspension period to driving only a motor vehicle equipped with an
16 ignition interlock device and only for the purposes of getting to and from:
17 Work, school or an alcohol treatment program; and the ignition interlock
18 provider for maintenance and downloading of data from the device.

19 (2) Whenever a person's driving privileges have been suspended for
20 one year as provided in K.S.A. 8-1014(a)(1), and amendments thereto,
21 after 90 days of such suspension, such person may apply to the division for
22 such person's driving privileges to be restricted for the remainder of the
23 one-year suspension period to driving only a motor vehicle equipped with
24 an ignition interlock device and only: Under the circumstances provided
25 by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for
26 the purpose of getting to and from the ignition interlock provider for
27 maintenance and downloading of data from the device.

28 (3) Except as provided in subsection (a)(4), whenever a person's
29 driving privileges have been suspended for one year as provided in K.S.A.
30 8-1014(b), and amendments thereto, after 45 days of such suspension, such
31 person may apply to the division for such person's driving privileges to be
32 restricted for the remainder of the one-year suspension period to driving
33 only a motor vehicle equipped with an ignition interlock device and only
34 for the purposes of getting to and from: Work, school or an alcohol
35 treatment program; and the ignition interlock provider for maintenance and
36 downloading of data from the device.

1 (4) Whenever a person's driving privileges have been suspended for
2 one year as provided in K.S.A. 8-1014(b)(2)(A), and amendments thereto,
3 after 45 days of such suspension, such person may apply to the division for
4 such person's driving privileges to be restricted for the remainder of the
5 one-year suspension period to driving only a motor vehicle equipped with
6 an ignition interlock device and only: Under the circumstances provided
7 by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for
8 the purpose of getting to and from the ignition interlock provider for
9 maintenance and downloading of data from the device.

10 (5) The division shall assess an application fee of \$100 for a person to
11 apply to modify the suspension to restricted ignition interlock status.

12 (6) The division shall approve the request for such restricted license
13 unless such person's driving privileges have been restricted, suspended,
14 revoked or disqualified pursuant to another action by the division or a
15 court. If the request is approved, upon receipt of proof of the installation of
16 such device, the division shall issue a copy of the order imposing such
17 restrictions on the person's driving privileges and such order shall be
18 carried by the person at any time the person is operating a motor vehicle
19 on the highways of this state. Except as provided in K.S.A. 8-1017, and
20 amendments thereto, if such person is convicted of a violation of the
21 restrictions, such person's driving privileges shall be suspended for an
22 additional year, in addition to any term of suspension or restriction as
23 provided in K.S.A. 8-1014(a) or (b), and amendments thereto.

24 (b) (1) Except as provided in subsection (b)(2), when a person has
25 completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and
26 amendments thereto, the division shall restrict the person's driving
27 privileges for 180 days to driving only a motor vehicle equipped with an
28 ignition interlock device.

29 (2) When a person has completed the suspension pursuant to K.S.A.
30 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the
31 person's driving privileges for one year to driving only a motor vehicle
32 equipped with an ignition interlock device if the records maintained by the
33 division indicate that such person has previously: (A) Been convicted of a
34 violation of K.S.A. 8-1599, and amendments thereto; (B) been convicted
35 of a violation of K.S.A. 41-727, and amendments thereto; (C) been
36 convicted of any violations listed in K.S.A. 8-285(a), and amendments
37 thereto; (D) been convicted of three or more moving traffic violations
38 committed on separate occasions within a 12-month period; or (E) had
39 such person's driving privileges revoked, suspended, canceled or
40 withdrawn.

41 (c) Except as provided in subsection (b), when a person has
42 completed the suspension pursuant to K.S.A. 8-1014(a) or (b), and
43 amendments thereto, the division shall restrict the person's driving

1 privileges pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, to
2 driving only a motor vehicle equipped with an ignition interlock device.
3 Upon restricting a person's driving privileges pursuant to this subsection,
4 the division shall issue a copy of the order imposing the restrictions which
5 is required to be carried by the person at any time the person is operating a
6 motor vehicle on the highways of this state.

7 (d) Whenever an ignition interlock device is required by law, such
8 ignition interlock device shall be approved by the division and maintained
9 at the person's expense. Proof of the installation of such ignition interlock
10 device, for the entire period required by the applicable law, shall be
11 provided to the division before the person's driving privileges are fully
12 reinstated. *Every person who has an ignition interlock device installed as*
13 *required by law shall be required to complete the ignition interlock device*
14 *program pursuant to rules and regulations adopted by the secretary of*
15 *revenue and proof of completion shall be provided to the division by the*
16 *approved service provider before the person's driving privileges are fully*
17 *reinstated.*

18 (e) Except as provided further, any person whose license is restricted
19 to operating only a motor vehicle with an ignition interlock device
20 installed may operate an employer's vehicle without an ignition interlock
21 device installed during normal business activities, provided that the person
22 does not partly or entirely own or control the employer's vehicle or
23 business. The provisions of this subsection shall not apply to any person
24 whose driving privileges have been restricted for the remainder of the one-
25 year suspension period as provided in subsection (a)(1) or (a)(3).

26 (f) Upon expiration of the period of time for which restrictions are
27 imposed pursuant to this section, the licensee may apply to the division for
28 the return of any license previously surrendered by the licensee. If the
29 license has expired, the person may apply to the division for a new license,
30 which shall be issued by the division upon payment of the proper fee and
31 satisfaction of the other conditions established by law, unless the person's
32 driving privileges have been suspended or revoked prior to expiration.

33 (g) Any person who has had the person's driving privileges
34 suspended, restricted or revoked pursuant to K.S.A. 8-1014(a), (b) or (c),
35 prior to the amendments by section 16 of chapter 172 of the 2012 Session
36 Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of
37 Kansas, may apply to the division to have the suspension, restriction or
38 revocation penalties modified in conformity with the provisions of K.S.A.
39 8-1014(a), (b) or (c), and amendments thereto. The division shall assess an
40 application fee of \$100 for a person to apply to modify the suspension,
41 restriction or revocation penalties previously issued. The division shall
42 modify the suspension, restriction or revocation penalties, unless such
43 person's driving privileges have been restricted, suspended, revoked or

1 disqualified pursuant to another action by the division or a court.

2 (h) The division shall remit all application fees collected pursuant to
3 subsections (a) and (g) to the state treasurer in accordance with the
4 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
5 each such remittance, the state treasurer shall deposit the entire amount in
6 the state treasury and shall credit such moneys to the division of vehicles
7 operating fund until an aggregate amount of \$100,000 is credited to the
8 division of vehicles operating fund each fiscal year. On and after an
9 aggregate amount of \$100,000 is credited to such fund each fiscal year, the
10 entire amount of such remittance shall be credited to the community
11 corrections supervision fund created by K.S.A. 2016 Supp. 75-52,113, and
12 amendments thereto. The application fee established in this section shall
13 be the only fee collected or moneys in the nature of a fee collected for such
14 application. Such fee shall only be established by an act of the legislature
15 and no other authority is established by law or otherwise to collect a fee.

16 Sec. 2. K.S.A. 2016 Supp. 12-4516 is hereby amended to read as
17 follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e)
18 and (f), any person who has been convicted of a violation of a city
19 ordinance of this state may petition the convicting court for the
20 expungement of such conviction and related arrest records if three or more
21 years have elapsed since the person:

22 (A) Satisfied the sentence imposed; or

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

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

30 (b) Any person convicted of a violation of any ordinance that is
31 prohibited by either K.S.A. 2016 Supp. 12-16,134(a) or (b), and
32 amendments thereto, and which was adopted prior to July 1, 2014, or who
33 entered into a diversion agreement in lieu of further criminal proceedings
34 for such violation, may petition the convicting court for the expungement
35 of such conviction or diversion agreement and related arrest records.

36 (c) Any person convicted of the violation of a city ordinance which
37 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
38 violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto, or who
39 entered into a diversion agreement in lieu of further criminal proceedings
40 for such violation, may petition the convicting court for the expungement
41 of such conviction or diversion agreement and related arrest records if:

42 (1) One or more years have elapsed since the person satisfied the
43 sentence imposed or the terms of a diversion agreement or was discharged

1 from probation, parole, conditional release or a suspended sentence; and

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

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

13 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
 14 repeal, or K.S.A. 2016 Supp. 21-5406, and amendments thereto;

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

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

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

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

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

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

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

30 (e) (1) No person may petition for expungement until five or more
 31 years have elapsed since the person satisfied the sentence imposed or the
 32 terms of a diversion agreement or was discharged from probation, parole,
 33 conditional release or a suspended sentence, if such person was convicted
 34 of a first violation of a city ordinance which would also constitute a first
 35 violation of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments
 36 thereto.

37 (2) No person may petition for expungement until 10 or more years
 38 have elapsed since the person satisfied the sentence imposed or was
 39 discharged from probation, parole, conditional release or a suspended
 40 sentence, if such person was convicted of a second or subsequent violation
 41 of a city ordinance which would also constitute a second or subsequent
 42 violation of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments
 43 thereto.

1 (3) *The provisions of this subsection shall apply to all violations*
2 *committed on or after July 1, 2006.*

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

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

10 (A) Defendant's full name;

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

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

14 (D) crime for which the defendant was arrested, convicted or
15 diverted;

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

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

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

21 (3) Any person who may have relevant information about the
22 petitioner may testify at the hearing. The court may inquire into the
23 background of the petitioner and shall have access to any reports or
24 records relating to the petitioner that are on file with the secretary of
25 corrections or the prisoner review board.

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

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

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

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

34 (i) When the court has ordered an arrest record, conviction or
35 diversion expunged, the order of expungement shall state the information
36 required to be contained in the petition. The clerk of the court shall send a
37 certified copy of the order of expungement to the Kansas bureau of
38 investigation which shall notify the federal bureau of investigation, the
39 secretary of corrections and any other criminal justice agency which may
40 have a record of the arrest, conviction or diversion. If the case was
41 appealed from municipal court, the clerk of the district court shall send a
42 certified copy of the order of expungement to the municipal court. The
43 municipal court shall order the case expunged once the certified copy of

1 the order of expungement is received. After the order of expungement is
2 entered, the petitioner shall be treated as not having been arrested,
3 convicted or diverted of the crime, except that:

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

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

9 (A) In any application for licensure as a private detective, private
10 detective agency, certification as a firearms trainer pursuant to K.S.A.
11 2016 Supp. 75-7b21, and amendments thereto, or employment as a
12 detective with a private detective agency, as defined by K.S.A. 75-7b01,
13 and amendments thereto; as security personnel with a private patrol
14 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
15 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
16 the Kansas department for aging and disability services;

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

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

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

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

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

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

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

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

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

3 (K) for applications received on and after July 1, 2006, to aid in
4 determining the petitioner's qualifications for a license to carry a concealed
5 weapon pursuant to the personal and family protection act, K.S.A. 2016
6 Supp. 75-7c01 et seq., and amendments thereto; *or*

7 (L) *for applications received on and after July 1, 2016, to aid in*
8 *determining the petitioner's qualifications for a license to act as a bail*
9 *enforcement agent pursuant to K.S.A. 2016 Supp. 75-7e01 through 75-*
10 *7e09 and K.S.A. 2016 Supp. 50-6,141, and amendments thereto;*

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

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

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

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

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

33 (1) The person whose record was expunged;

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

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

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

1 whose record has been expunged;

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

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

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

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

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

26 (10) the Kansas racing and gaming commission, or a designee of the
27 commission, and the request is accompanied by a statement that the
28 request is being made to aid in determining qualifications of the following
29 under the Kansas expanded lottery act:

30 (A) Lottery gaming facility managers and prospective managers,
31 racetrack gaming facility managers and prospective managers, licensees
32 and certificate holders; and

33 (B) their officers, directors, employees, owners, agents and
34 contractors;

35 (11) the state gaming agency, and the request is accompanied by a
36 statement that the request is being made to aid in determining
37 qualifications:

38 (A) To be an employee of the state gaming agency; or

39 (B) to be an employee of a tribal gaming commission or to hold a
40 license issued pursuant to a tribal-state gaming compact;

41 (12) the Kansas securities commissioner, or a designee of the
42 commissioner, and the request is accompanied by a statement that the
43 request is being made in conjunction with an application for registration as

1 a broker-dealer, agent, investment adviser or investment adviser
 2 representative by such agency and the application was submitted by the
 3 person whose record has been expunged;

4 (13) the attorney general, and the request is accompanied by a
 5 statement that the request is being made to aid in determining
 6 qualifications for a license to:

7 (A) Carry a concealed weapon pursuant to the personal and family
 8 protection act; or

9 (B) *act as a bail enforcement agent pursuant to K.S.A. 2016 Supp.*
 10 *75-7e01 through 75-7e09 and K.S.A. 2016 Supp. 50-6,141, and*
 11 *amendments thereto;*

12 (14) the Kansas sentencing commission;

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

17 (16) a law enforcement agency and the request is accompanied by a
 18 statement that the request is being made to aid in determining eligibility
 19 for employment as a law enforcement officer as defined by K.S.A. 22-
 20 2202, and amendments thereto.

21 Sec. 3. K.S.A. 2016 Supp. 21-6614 is hereby amended to read as
 22 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e)
 23 and (f), any person convicted in this state of a traffic infraction, cigarette
 24 or tobacco infraction, misdemeanor or a class D or E felony, or for crimes
 25 committed on or after July 1, 1993, any nongrid felony or felony ranked in
 26 severity levels 6 through 10 of the nondrug grid, or for crimes committed
 27 on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in
 28 severity level 4 of the drug grid, or for crimes committed on or after July
 29 1, 2012, any felony ranked in severity level 5 of the drug grid may petition
 30 the convicting court for the expungement of such conviction or related
 31 arrest records if three or more years have elapsed since the person: (A)
 32 Satisfied the sentence imposed; or (B) was discharged from probation, a
 33 community correctional services program, parole, postrelease supervision,
 34 conditional release or a suspended sentence.

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

40 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
 41 3512, prior to its repeal, convicted of a violation of K.S.A. 2016 Supp. 21-
 42 6419, and amendments thereto, or who entered into a diversion agreement
 43 in lieu of further criminal proceedings for such violation, may petition the

1 convicting court for the expungement of such conviction or diversion
2 agreement and related arrest records if:

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

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

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

25 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
26 repeal, or K.S.A. 2016 Supp. 21-5406, and amendments thereto, or as
27 prohibited by any law of another state which is in substantial conformity
28 with that statute;

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

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

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

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

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

1 amendments thereto, or required by a law of another state which is in
 2 substantial conformity with those statutes;

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

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

6 (d) (1) No person may petition for expungement until five or more
 7 years have elapsed since the person satisfied the sentence imposed or the
 8 terms of a diversion agreement or was discharged from probation, a
 9 community correctional services program, parole, postrelease supervision,
 10 conditional release or a suspended sentence, if such person was convicted
 11 of a first violation of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and
 12 amendments thereto, including any diversion for such violation.

13 (2) No person may petition for expungement until 10 or more years
 14 have elapsed since the person satisfied the sentence imposed or was
 15 discharged from probation, a community correctional services program,
 16 parole, postrelease supervision, conditional release or a suspended
 17 sentence, if such person was convicted of a second or subsequent violation
 18 of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments thereto.

19 (3) *Except as provided further, the provisions of this subsection shall*
 20 *apply to all violations committed on or after July 1, 2006. The provisions*
 21 *of subsection (d)(2) shall not apply to violations committed on or after*
 22 *July 1, 2014, but prior to July 1, 2015.*

23 (e) There shall be no expungement of convictions for the following
 24 offenses or of convictions for an attempt to commit any of the following
 25 offenses:

26 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
 27 2016 Supp. 21-5503, and amendments thereto;

28 (2) indecent liberties with a child or aggravated indecent liberties
 29 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
 30 or K.S.A. 2016 Supp. 21-5506, and amendments thereto;

31 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
 32 prior to its repeal, or K.S.A. 2016 Supp. 21-5504(a)(3) or (a)(4), and
 33 amendments thereto;

34 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
 35 to its repeal, or K.S.A. 2016 Supp. 21-5504, and amendments thereto;

36 (5) indecent solicitation of a child or aggravated indecent solicitation
 37 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
 38 or K.S.A. 2016 Supp. 21-5508, and amendments thereto;

39 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
 40 to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

41 (7) aggravated incest, as defined in K.S.A. 21-3603, prior to its
 42 repeal, or K.S.A. 2016 Supp. 21-5604, and amendments thereto;

43 (8) endangering a child or aggravated endangering a child, as defined

- 1 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2016 Supp.
- 2 21-5601, and amendments thereto;
- 3 (9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
- 4 or K.S.A. 2016 Supp. 21-5602, and amendments thereto;
- 5 (10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
- 6 or K.S.A. 2016 Supp. 21-5401, and amendments thereto;
- 7 (11) murder in the first degree, as defined in K.S.A. 21-3401, prior to
- 8 its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto;
- 9 (12) murder in the second degree, as defined in K.S.A. 21-3402, prior
- 10 to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments thereto;
- 11 (13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
- 12 its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;
- 13 (14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
- 14 its repeal, or K.S.A. 2016 Supp. 21-5405, and amendments thereto;
- 15 (15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
- 16 or K.S.A. 2016 Supp. 21-5505, and amendments thereto, when the victim
- 17 was less than 18 years of age at the time the crime was committed;
- 18 (16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
- 19 its repeal, or K.S.A. 2016 Supp. 21-5505, and amendments thereto;
- 20 (17) a violation of K.S.A. 8-2,144, and amendments thereto,
- 21 including any diversion for such violation; or
- 22 (18) any conviction for any offense in effect at any time prior to July
- 23 1, 2011, that is comparable to any offense as provided in this subsection.
- 24 (f) Notwithstanding any other law to the contrary, for any offender
- 25 who is required to register as provided in the Kansas offender registration
- 26 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
- 27 expungement of any conviction or any part of the offender's criminal
- 28 record while the offender is required to register as provided in the Kansas
- 29 offender registration act.
- 30 (g) (1) When a petition for expungement is filed, the court shall set a
- 31 date for a hearing of such petition and shall cause notice of such hearing to
- 32 be given to the prosecutor and the arresting law enforcement agency. The
- 33 petition shall state the:
 - 34 (A) Defendant's full name;
 - 35 (B) full name of the defendant at the time of arrest, conviction or
 - 36 diversion, if different than the defendant's current name;
 - 37 (C) defendant's sex, race and date of birth;
 - 38 (D) crime for which the defendant was arrested, convicted or
 - 39 diverted;
 - 40 (E) date of the defendant's arrest, conviction or diversion; and
 - 41 (F) identity of the convicting court, arresting law enforcement
 - 42 authority or diverting authority.
- 43 (2) Except as otherwise provided by law, a petition for expungement

1 shall be accompanied by a docket fee in the amount of \$176. On and after
2 July 1, 2015, through June 30, 2017, the supreme court may impose a
3 charge, not to exceed \$19 per case, to fund the costs of non-judicial
4 personnel. The charge established in this section shall be the only fee
5 collected or moneys in the nature of a fee collected for the case. Such
6 charge shall only be established by an act of the legislature and no other
7 authority is established by law or otherwise to collect a fee.

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

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

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

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

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

22 (i) When the court has ordered an arrest record, conviction or
23 diversion expunged, the order of expungement shall state the information
24 required to be contained in the petition. The clerk of the court shall send a
25 certified copy of the order of expungement to the Kansas bureau of
26 investigation which shall notify the federal bureau of investigation, the
27 secretary of corrections and any other criminal justice agency which may
28 have a record of the arrest, conviction or diversion. *If the case was*
29 *appealed from municipal court, the clerk of the district court shall send a*
30 *certified copy of the order of expungement to the municipal court. The*
31 *municipal court shall order the case expunged once the certified copy of*
32 *the order of expungement is received.* After the order of expungement is
33 entered, the petitioner shall be treated as not having been arrested,
34 convicted or diverted of the crime, except that:

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

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

40 (A) In any application for licensure as a private detective, private
41 detective agency, certification as a firearms trainer pursuant to K.S.A.
42 2016 Supp. 75-7b21, and amendments thereto, or employment as a
43 detective with a private detective agency, as defined by K.S.A. 75-7b01,

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

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

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

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

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

22 (F) upon application for a commercial driver's license under K.S.A.
23 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

34 (K) for applications received on and after July 1, 2006, to aid in
35 determining the petitioner's qualifications for a license to carry a concealed
36 weapon pursuant to the personal and family protection act, K.S.A. 2016
37 Supp. 75-7c01 et seq., and amendments thereto; *or*

38 *(L) for applications received on and after July 1, 2016, to aid in*
39 *determining the petitioner's qualifications for a license to act as a bail*
40 *enforcement agent pursuant to K.S.A. 2016 Supp. 75-7e01 through 75-*
41 *7e09 and K.S.A. 2016 Supp. 50-6,141, and amendments thereto;*

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

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

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

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

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

20 (2) Notwithstanding the provisions of subsection (k)(1), and except as
21 provided in K.S.A. 2016 Supp. 21-6304(a)(3)(A), and amendments
22 thereto, the expungement of a prior felony conviction does not relieve the
23 individual of complying with any state or federal law relating to the use,
24 shipment, transportation, receipt or possession of firearms by persons
25 previously convicted of a felony.

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

31 (1) The person whose record was expunged;

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

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

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

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

1 expungement order;

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

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

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

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

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

30 (11) the Kansas sentencing commission;

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

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

42 (14) the Kansas commission on peace officers' standards and training
43 and the request is accompanied by a statement that the request is being

1 made to aid in determining certification eligibility as a law enforcement
2 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
3 (15) a law enforcement agency and the request is accompanied by a
4 statement that the request is being made to aid in determining eligibility
5 for employment as a law enforcement officer as defined by K.S.A. 22-
6 2202, and amendments thereto;
7 (16) the attorney general and the request is accompanied by a
8 statement that the request is being made to aid in determining
9 qualifications for a license to:
10 (A) Carry a concealed weapon pursuant to the personal and family
11 protection act; *or*
12 (B) *act as a bail enforcement agent pursuant to K.S.A. 2016 Supp.*
13 *75-7e01 through 75-7e09 and K.S.A. 2016 Supp. 50-6,141, and*
14 *amendments thereto; or*
15 (17) the Kansas bureau of investigation for the purposes of:
16 (A) Completing a person's criminal history record information within
17 the central repository, in accordance with K.S.A. 22-4701 et seq., and
18 amendments thereto; *or*
19 (B) providing information or documentation to the federal bureau of
20 investigation, in connection with the national instant criminal background
21 check system, to determine a person's qualification to possess a firearm.
22 (m) The provisions of subsection (l)(17) shall apply to records
23 created prior to, on and after July 1, 2011.
24 Sec. 4. K.S.A. 2016 Supp. 8-1015, 12-4516, 12-4516e, 21-6614, 21-
25 6614g and 21-6614h are hereby repealed.
26 Sec. 5. This act shall take effect and be in force from and after its
27 publication in the statute book.