

HOUSE BILL No. 2162

By Committee on Judiciary

2-4

1 AN ACT concerning expungement of arrest records; docket fee;
2 amending K.S.A. 2010 Supp. 22-2410 and repealing the existing
3 section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 22-2410 is hereby amended to read as
7 follows: 22-2410. (a) Any person who has been arrested in this state may
8 petition the district court for the expungement of such arrest record.

9 (b) When a petition for expungement is filed, the court shall set a
10 date for hearing on such petition and shall cause notice of such hearing to
11 be given to the prosecuting attorney and the arresting law enforcement
12 agency. When a petition for expungement is filed, the official court file
13 shall be separated from the other records of the court, and shall be
14 disclosed only to a judge of the court and members of the staff of the
15 court designated by a judge of the district court, the prosecuting attorney,
16 the arresting law enforcement agency, or any other person when
17 authorized by a court order, subject to any conditions imposed by the
18 order. Except as otherwise provided by law, a petition for expungement
19 shall be accompanied by a docket fee in the amount of \$100. Except as
20 provided further, the docket fee established in this section shall be the
21 only fee collected or moneys in the nature of a fee collected for the
22 docket fee. Such fee shall only be established by an act of the legislature
23 and no other authority is established by law or otherwise to collect a fee.
24 On and after the effective date of this act through June 30, 2011, the
25 supreme court may impose an additional charge, not to exceed \$15 per
26 docket fee, to fund the costs of ~~non-judicial~~ *nonjudicial* personnel. The
27 petition shall state:

- 28 (1) The petitioner's full name;
29 (2) the full name of the petitioner at the time of arrest, if different
30 than the petitioner's current name;
31 (3) the petitioner's sex, race and date of birth;
32 (4) the crime for which the petitioner was arrested;
33 (5) the date of the petitioner's arrest; and
34 (6) the identity of the arresting law enforcement agency.

35 No surcharge or fee shall be imposed to any person filing a petition
36 pursuant to this section, who was arrested as a result of being a victim of

1 identity theft under K.S.A. 21-4018, *prior to its repeal, or subsection (a)*
2 *of section 177 of chapter 136 of the 2010 Session Laws of Kansas, and*
3 *amendments thereto, or who has had criminal charges dismissed because*
4 *a court has found that there was no probable cause for the arrest, the*
5 *petitioner was found not guilty in court proceedings or the charges have*
6 *been dismissed* . Any person who may have relevant information about
7 the petitioner may testify at the hearing. The court may inquire into the
8 background of the petitioner.

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

13 (2) a court has found that there was no probable cause for the arrest;

14 (3) the petitioner was found not guilty in court proceedings; or

15 (4) the expungement would be in the best interests of justice and (A)
16 charges have been dismissed; or (B) no charges have been or are likely to
17 be filed.

18 (d) When the court has ordered expungement of an arrest record and
19 subsequent court proceedings, if any, the order shall state the information
20 required to be stated in the petition and shall state the grounds for
21 expungement under subsection (c). The clerk of the court shall send a
22 certified copy of the order to the Kansas bureau of investigation which
23 shall notify the federal bureau of investigation, the secretary of
24 corrections and any other criminal justice agency which may have a
25 record of the arrest. If an order of expungement is entered, the petitioner
26 shall be treated as not having been arrested.

27 (e) If the ground for expungement is as provided in subsection (c)
28 (4), the court shall determine whether, in the interests of public welfare,
29 the records should be available for any of the following purposes: (1) In
30 any application for employment as a detective with a private detective
31 agency, as defined in K.S.A. 75-7b01, and amendments thereto; as
32 security personnel with a private patrol operator, as defined by K.S.A. 75-
33 7b01, and amendments thereto; or with an institution, as defined in
34 K.S.A. 76-12a01, and amendments thereto, of the department of social
35 and rehabilitation services;

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

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

42 (4) to aid in determining the petitioner's qualifications for executive
43 director of the Kansas racing commission, for employment with the

1 commission or for work in sensitive areas in parimutuel racing as deemed
2 appropriate by the executive director of the commission, or to aid in
3 determining qualifications for licensure or renewal of licensure by the
4 commission;

5 (5) in any application for a commercial driver's license under K.S.A.
6 8-2,125 through 8-2,142, and amendments thereto;

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

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

12 (8) in any other circumstances which the court deems appropriate.

13 (f) Subject to any disclosures required under subsection (e), in any
14 application for employment, license or other civil right or privilege, or
15 any appearance as a witness, a person whose arrest records have been
16 expunged as provided in this section may state that such person has never
17 been arrested.

18 (g) Whenever a petitioner's arrest records have been expunged as
19 provided in this section, the custodian of the records of arrest,
20 incarceration due to arrest or court proceedings related to the arrest, shall
21 not disclose the arrest or any information related to the arrest, except as
22 directed by the order of expungement or when requested by the person
23 whose arrest record was expunged.

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

27 Sec. 2. K.S.A. 2010 Supp. 22-2410 is hereby repealed.

28 Sec. 3. This act shall take effect and be in force from and after its
29 publication in the statute book.

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