

House Substitute for SENATE BILL No. 128

AN ACT concerning courts; relating to attorney licensure; selection and appointment of judges and justices; supreme court nominating commission and district judicial nominating commissions; applicability of open meetings act and open records act; amending K.S.A. 20-122, 20-123, 20-130, 20-132, 20-2904 and 20-2907 and K.S.A. 2015 Supp. 7-127, 12-4516, 20-2909, 20-3020, 21-6614, 22-2410 and 22-3609 and repealing the existing sections; also repealing K.S.A. 2015 Supp. 12-4516d and 21-6614f.

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

Section 1. K.S.A. 2015 Supp. 7-127 is hereby amended to read as follows: 7-127. (a) *Each applicant for admission to practice law in this state, in submitting the application, shall provide to the clerk of the supreme court the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto. Whenever any person whose application for admission to practice law in this state is pending shall move from the residential address listed on such person's application, or when the name of any such person is changed by marriage or otherwise, such person, within 10 days thereafter, shall notify the clerk of the supreme court in writing of such person's old and new residential addresses or of such person's former and new names.*

(b) *Any person whose application to practice law in Kansas is pending as of the effective date of this act, and for whom the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, is not correct on such application as of the effective date of this act, shall provide the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days after the effective date of this act. The clerk of the supreme court, within 30 days after the effective date of this act, shall send notice to all persons whose applications to practice law in Kansas are pending as of the effective date of this act, that such persons are required by law to provide the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days after the effective date of this act.*

(c) The supreme court may require an applicant for admission to practice law in this state to be fingerprinted and submit to a national criminal history record check. The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal arrests and convictions in this state or other jurisdictions. The supreme court and the state board of law examiners are authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of law examiners and the supreme court may use the information obtained from fingerprinting and the applicant's criminal history only for purposes of verifying the identification of any applicant and in the official determination of character and fitness of the applicant for admission to practice law in this state.

~~(b)-(d)~~ (d) Local and state law enforcement officers and agencies shall assist the supreme court in taking and processing of fingerprints of applicants seeking admission to practice law in this state and shall release all records of an applicant's arrests and convictions to the supreme court and the state board of law examiners.

New Sec. 2. (a) The clerk of the supreme court shall maintain in the clerk's office a roster of attorneys licensed to practice law in Kansas. Such roster shall include the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, the congressional district of residence and the judicial district of residence for each person licensed to practice law in Kansas. Whenever any person licensed to practice law in Kansas moves from the residential address listed for such person on such roster, or when the name of any such person is changed by marriage or otherwise, such person, within 10 days thereafter, shall notify the clerk of the supreme court in writing of such person's old and new residential addresses or of such person's former and new names.

(b) Each person on the roster of attorneys licensed to practice law in Kansas on the effective date of this act, and for whom the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, is not correct on such roster on the effective date of this act, shall provide the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days after the effective date of this act.

The clerk of the supreme court, within 30 days after the effective date of this act, shall send notice to all persons listed on the roster of attorneys licensed to practice law in Kansas on the effective date of this act, that such persons are required by law to provide the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days of the effective date of this act.

(c) Only attorneys licensed to practice law in Kansas and residing in Kansas on or before the 15<sup>th</sup> day of February preceding the selection of the chairperson of the supreme court nominating commission as provided in K.S.A. 20-119, and amendments thereto, and only attorneys so licensed and residing in the congressional district on or before the 15<sup>th</sup> day of February preceding the selection of the members of the supreme court nominating commission to be chosen from among the members of the bar of such congressional district as provided in K.S.A. 20-120, and amendments thereto, and, in either event, only attorneys for whom the roster of attorneys licensed to practice law in Kansas contains the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, shall be entitled to make nominations or receive and cast ballots in such selections.

(d) (1) On or before the 20<sup>th</sup> day of February preceding the selection of a chairperson of the supreme court nominating commission, the clerk of the supreme court shall transmit a certified copy of the roster of attorneys licensed to practice law in Kansas to the secretary of state. Such certified copy shall include the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, for each person listed on the roster and having a residential address within Kansas as of the preceding 15<sup>th</sup> day of February.

(2) On or before the 20<sup>th</sup> day of February preceding the selection of a member of the supreme court nominating commission to be chosen from among the members of the bar of a congressional district, the clerk of the supreme court shall transmit a certified copy of the roster of attorneys licensed to practice law in Kansas to the secretary of state. Such certified copy shall include the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, for each person listed on the roster and having a residential address within the congressional district as of the preceding 15<sup>th</sup> day of February.

(3) The certified copy of the roster shall be transmitted in a format prescribed by the secretary of state. Upon receipt of such certified roster, the secretary of state shall append thereto the unique voter identification number for each person listed on the roster having such a number, as contained in the centralized voter registration database described in K.S.A. 2015 Supp. 25-2304, and amendments thereto.

(e) Notwithstanding any other provision of law, the names, residential addresses, dates of birth, unique voter identification numbers and dates of licensure to practice law in Kansas of all persons listed on the certified roster of attorneys licensed to practice law in Kansas created pursuant to subsection (d), including the information as appended to the roster pursuant to subsection (d), shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

Sec. 3. K.S.A. 2015 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

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

(2) Except as provided in subsections (b), (c), (d), (e) and (f), 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) Any person convicted of a violation of any ordinance that is prohibited by either K.S.A. 2015 Supp. 12-16,134(a) or (b), and amendments

thereto, and which was adopted prior to July 1, 2014, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records.

(c) Any person convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 2015 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One 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; and

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

(d) 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, prior to its repeal, or K.S.A. 2015 Supp. 21-5406, 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 K.S.A. 8-142 *Fifth*, 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, prior to its repeal, 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, prior to its repeal.

(e) (1) 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 a first violation of a city ordinance which would also constitute a first violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments thereto.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of a city ordinance which would also constitute a second or subsequent violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments thereto.

(f) 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. 8-2,144, and amendments thereto.

(g) (1) 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 the:

(A) Defendant’s full name;

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

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

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

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

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

(2) 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.

(3) 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 prisoner review board.

(h) 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.

(i) 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. *If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received.* 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. 2015 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 *Kansas* department for aging and disability 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;

(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; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2015 Supp. 75-7c01 et seq., 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.

(j) 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.

(k) Subject to the disclosures required pursuant to subsection (i), 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.

(l) 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 for aging and disability 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 *Kansas* department for aging and disability 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, race-track 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. 4. K.S.A. 20-122 is hereby amended to read as follows: 20-122.

(a) The clerk of the supreme court ~~may~~ shall use the *certified* roster of attorneys ~~in the clerk's office~~ licensed to practice law in Kansas, *as provided to the secretary of state pursuant to section 2, and amendments thereto*, for ascertaining the names and places of residence of those entitled to receive ballots and for ascertaining the qualifications of those nominated for membership on the commission. The clerk shall supply with each ballot distributed a certificate to be signed and returned by the member of the bar voting such ballot, evidencing the qualifications of such member of the bar to vote, *including the name and residential address of such member of the bar*, and certifying that the ballot was voted by the certifying voter.

(b) ~~To the end~~ *In order to ensure* that the vote cast may be secret, *the clerk shall provide* a separate envelope ~~shall be provided~~ for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be ~~returned in an~~ *placed in another* envelope, also to be supplied by the clerk, together with the signed certificate. ~~No~~ A ballot not accompanied by the signed certificate of the voter shall *not* be counted. When the voted ballots are received by the clerk they shall be separated from the certificates by the canvassers, and after the ballots are counted and the results certified ~~both~~, the ballots ~~and the certificates~~ shall be preserved by the clerk for a period of six months and *the certificates shall be preserved by the clerk for a period of five years*. No one shall be permitted to inspect ~~them~~ *the ballots received pursuant to this section* except on order of the supreme court. *Unless otherwise ordered by the supreme court*, at the end of such ~~six months~~ *six-month* period the clerk; ~~unless otherwise ordered by the supreme court~~, shall destroy ~~them~~ *the ballots received pursuant to this section, and at the end of such five-year*

period, the clerk shall destroy the certificates received pursuant to this section.

(c) *Within 14 days after the results of a selection are certified pursuant to this section, the clerk of the supreme court shall: (1) Create a list designating the position and year for which the selection was held and containing the names and residential addresses of all persons who returned a ballot with a signed certificate as described in subsection (b); and (2) transmit a certified copy of the list to the secretary of state. The list described in this subsection shall be transmitted in a format prescribed by the secretary of state. Upon receipt of the list described in this subsection, the secretary of state shall append the information contained therein to the roster for such selection as described in section 2, and amendments thereto.*

(d) *Notwithstanding any other provision of law, the certificates received for a selection pursuant to this section shall be disclosed upon proper request submitted to the clerk of the supreme court pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.*

(e) *Notwithstanding any other provision of law, the lists described in subsection (c) shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.*

(f) *The provisions of this section shall apply to all selections held under K.S.A. 20-119 and 20-120, and amendments thereto, which have not been canvassed pursuant to K.S.A. 20-130, and amendments thereto, regardless of whether such selections are scheduled, upcoming or pending as on the effective date of this act.*

Sec. 5. K.S.A. 20-123 is hereby amended to read as follows: 20-123.

(a) *When the chairperson and other members of the commission chosen by the members of the bar have been elected, and after the names of the nonlawyer members appointed by the governor have been certified to the clerk of the supreme court as provided in this act, the clerk shall make a record thereof in the clerk's office and shall notify the members of the commission of their election and appointment. The commission shall meet from time to time as may be necessary to discharge the responsibilities of the commission. Such meetings shall be held at such place as the clerk of the supreme court may arrange. Such meeting shall be held upon the call of the chairperson, or in the event of the chairperson's failure to call a meeting when a meeting is necessary, upon the call of any four members of the commission. The commission shall act only at a meeting, and may act only by the concurrence of a majority of its members. The commission shall have power to adopt such reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties as are consistent with this act and the constitution of the state of Kansas.*

(b) (1) *The supreme court nominating commission shall be and is hereby deemed to be a public body and shall be subject to the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.*

(2) *Except as provided further, the commission shall not recess for a closed or executive meeting for any purpose. The commission, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting only for the purpose of discussing sensitive financial information contained within the personal financial records or official background check of a candidate for judicial nomination.*

(3) *Nothing in this subsection shall be construed to supersede the commission's discretion to close a record or portion of a record submitted to the commission pursuant to any applicable exception to public disclosure under the open records act.*

Sec. 6. K.S.A. 20-130 is hereby amended to read as follows: 20-130.

~~The canvassers at any election held pursuant to this act shall consist of the clerk of the supreme court and two (2) or more persons who are members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice, the secretary of state or the secretary of state's designee and the attorney general or the attorney general's designee.~~ The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk.

Sec. 7. K.S.A. 20-132 is hereby amended to read as follows: 20-132.

When a vacancy occurs in the supreme court, the clerk of such court shall promptly notify the chairman of the commission of such vacancy, *and the commission shall make nominations of three persons to fill such vacancy and certify the names of the nominees to the governor.* When it is known that a vacancy will occur at a definite future date, but the vacancy has not yet occurred, the clerk shall notify the chairman of the commission thereof, and the commission may, within ~~sixty~~ (60) days prior to the occurrence of such vacancy, make its nominations and submit to the governor the names of three ~~(3)~~ persons nominated for such forthcoming vacancy. To the end that the administration of justice may be facilitated and that no vacancy on the supreme court may be permitted to exist unduly, the commission shall make its nominations for each vacancy and certify them to the governor as promptly as possible, and in any event not later than ~~sixty~~ (60) days from the time such vacancy occurs.

New Sec. 8. (a) Only attorneys licensed to practice law in Kansas and residing in the judicial district on or before the 15<sup>th</sup> day of November preceding the election of a lawyer member of the district judicial nominating commission, and for whom the roster of attorneys licensed to practice law in Kansas contains the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, shall be entitled to make nominations or receive and cast ballots in such elections.

(b) On or before the 20<sup>th</sup> day of November preceding the election of a lawyer member of the district judicial nominating commission, the clerk of the supreme court shall transmit a certified copy of the roster of attorneys licensed to practice law in Kansas to the secretary of state. Such certified copy shall include the information enumerated in K.S.A. 2015 Supp. 25-2309(b)(1) through (5), and amendments thereto, for each person listed on the roster and having a residential address within the judicial district as of the preceding 15<sup>th</sup> day of November. The certified copy of the roster shall be transmitted in a format prescribed by the secretary of state. Upon receipt of such certified roster, the secretary of state shall append thereto the unique voter identification number for each person listed on the roster having such a number, as contained in the centralized voter registration database described in K.S.A. 2015 Supp. 25-2304, and amendments thereto.

(c) Notwithstanding any other provision of law, the names, residential addresses, dates of birth, unique voter identification numbers and dates of licensure to practice law in Kansas of all persons listed on the certified roster of attorneys licensed to practice law in Kansas created pursuant to subsection (b), including the information as appended to the roster pursuant to subsection (b), shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

Sec. 9. K.S.A. 20-2904 is hereby amended to read as follows: 20-2904. (a) ~~Lawyer members of the district judicial nominating commission shall be elected by the lawyers who are qualified electors of the judicial district and who are registered with the clerk of the supreme court pursuant to rule 208 of such court. Each lawyer member of a district judicial nominating commission shall be a qualified elector of such judicial district pursuant to this section. The clerk of the supreme court shall use the certified roster of attorneys licensed to practice law in Kansas, as provided to the secretary of state pursuant to section 8, and amendments thereto, for ascertaining the names and places of residence of those entitled to receive ballots and for ascertaining the qualifications of those nominated for membership on the district judicial nominating commission.~~

(b) The number of lawyer members to be elected to the district judicial nominating commission of a judicial district shall be as follows:

(1) In a judicial district consisting of a single county, the number of members elected shall be equal to the number of nonlawyer members appointed pursuant to ~~subsection (a)(1)~~ of K.S.A. 20-2905(a)(1), and amendments thereto.

(2) In a judicial district consisting of two counties, four members shall be elected.

(3) In a judicial district consisting of three or more counties, the number of members elected shall equal the number of counties in such judicial district.

~~(b)~~(c) (1) Between December 1 and December 15 of the year in



which nonpartisan selection of judges of the district court is approved by the electors of the judicial district as provided in K.S.A. 20-2901, and amendments thereto, the clerk of the supreme court shall send to each lawyer by ordinary first class mail a form for nominating one lawyer for election to the commission. Any such nomination shall be received in the office of the clerk of the supreme court on or before January 1 of the following year, together with the written consent of the nominee. After receipt of all nominations which are timely submitted, the clerk shall prepare a ballot containing the names of all lawyers so nominated and shall mail one such ballot and instructions for voting such ballot to each registered lawyer in the judicial district. Ballots shall be prepared in such manner that each lawyer receiving the same shall be instructed to vote for not more than the number of positions to be filled. Each such ballot shall be accompanied by a certificate to be signed and returned by the lawyer voting such ballot, evidencing the qualifications of such lawyer to vote, *including the name and residential address of such lawyer*, and certifying that the ballot was voted by such person. In any judicial district in which the number of nominees does not exceed the number of positions to be filled, the clerk shall declare those nominees to be elected without preparation of a ballot.

(2) In order to insure that the election of lawyer members is by secret ballot, the clerk shall provide a separate envelope for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be placed in another envelope, also to be supplied by the clerk, together with the signed certificate, and received in the office of the clerk of the supreme court on or before February 15 of such year. *A ballot not accompanied by the signed certificate of the voter shall not be counted.* The ballots returned as provided in this section shall be canvassed within ~~five~~ 10 days thereafter. The canvassers shall consist of the clerk of the supreme court ~~and two or more persons who are registered members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice, the secretary of state or the secretary of state's designee and the attorney general or the attorney general's designee.~~ The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk. *After the ballots are counted and the results certified, the ballots shall be preserved by the clerk for a period of six months, and the certificates shall be preserved by the clerk for a period of five years. No one shall be permitted to inspect the ballots received pursuant to this section except upon order by the supreme court. Unless otherwise ordered by the supreme court, at the end of such six-month period, the clerk shall destroy the ballots received pursuant to this section, and at the end of such five-year period, the clerk shall destroy the certificates received pursuant to this section.*

(c) *Within 14 days after the results of an election are certified pursuant to this section, the clerk of the supreme court shall: (1) Create a list designating the positions and year for which the selection was held and containing the names and residential addresses of all persons who returned a ballot with a signed certificate as described in subsection (b); and (2) transmit a certified copy of the list to the secretary of state. The list described in this subsection shall be transmitted in a format prescribed by the secretary of state. Upon receipt of the list described in this subsection, the secretary of state shall append the information contained therein to the roster for such election as described in section 8, and amendments thereto.*

(d) *Notwithstanding any other provision of law, the certificates received for an election pursuant to this section shall be disclosed upon proper request submitted to the clerk of the supreme court pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.*

(e) *Notwithstanding any other provision of law, the lists described in subsection (c) shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.*

~~(e)~~(f) After the ballots are counted and tabulated in descending order from the nominee receiving the highest number of votes the canvassers shall declare to be elected those nominees who are equal in number to the number of lawyers to be elected and who have the greatest number of votes. In the event of a tie creating more nominees to be elected than

there are positions to be filled, the canvassers shall determine the person or persons to be elected by lot. In the event that less than the required number of lawyers is elected, the positions for which lawyers have not been elected shall be declared vacant and the vacancies filled in the manner prescribed by ~~subsection (e) of~~ K.S.A. 20-2906(e), and amendments thereto.

~~(d)~~(g) The procedure provided in this section for election of lawyers to serve as members of the first district judicial nominating commission established in a judicial district shall apply to the election of lawyers to succeed lawyer members of the commission whose terms of office expire, except that the form for submitting a nomination shall be sent between December 1 and December 15 of the year preceding the year in which such terms of office expire, and the dates prescribed for submission of nominations and the mailing, returning and canvassing of ballots shall apply in the year in which such terms of office expire.

Sec. 10. K.S.A. 20-2907 is hereby amended to read as follows: 20-2907. (a) Prior to taking office, each member of a district judicial nominating commission shall take and subscribe an oath of office as provided by law for public officers, and shall file the same with the clerk of the supreme court. After the members of the first commission established in a judicial district have commenced their terms of office, the chairman shall call a meeting of the commission to be held within the judicial district at a time and place designated by the chairman. At such meeting, the commission shall determine a regular meeting place or places, and the commission shall have the power to adopt such reasonable and proper rules and regulations as are necessary for the conduct of its proceedings and the discharge of its duties, consistent with the provisions of this act and the constitution and laws of this state.

(b) The commission shall meet only upon call of the chairman, and the commission shall not take any final action except at such meeting. A majority of the members of the commission shall constitute a quorum to do business, but no final action shall be taken except upon a vote of the majority of the members of the commission.

(c) Members of the commission shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in performing their official duties, as provided in ~~subsections (b), (c) and (d) of~~ K.S.A. 75-3223 (b), (c) and (d), and amendments thereto. Such expenses shall be paid from the judicial nominating commission fund as provided in K.S.A. 20-138, ~~as amended~~ and amendments thereto.

(d) The board of county commissioners of each county in a judicial district shall cooperate with the district judicial nominating commission of such judicial district, and shall make available to the commission whenever possible the facilities and services of such county, in order to expedite the business of the commission.

(e) (1) *A district judicial nominating commission shall be and is hereby deemed to be a public body and shall be subject to the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.*

(2) *Except as provided further, the commission shall not recess for a closed or executive meeting for any purpose. The commission, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting only for the purpose of discussing sensitive financial information contained within the personal financial records or official background check of a candidate for judicial nomination.*

(3) *Nothing in this subsection shall be construed to supersede the commission's discretion to close a record or portion of a record submitted to the commission pursuant to any applicable exception to public disclosure under the open records act.*

Sec. 11. K.S.A. 2015 Supp. 20-2909 is hereby amended to read as follows: 20-2909. (a) (1) Whenever a vacancy occurs in the office of judge of the district court in any judicial district, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district not later than 120 days following the date the vacancy occurs or will occur.

(2) The chairperson, in consultation with members of the commission, within five days after receipt of such notice, shall set a schedule for accepting nominations and conducting interviews for the purpose of nom-

inating persons for appointment to such office. It shall be the duty of the commission to nominate not less than ~~two~~ *three* nor more than ~~three~~ *five* persons for each office which is vacant, and shall submit the names of the persons so nominated to the governor. Any person nominated shall have the qualifications prescribed by ~~subsection (b)~~ of K.S.A. 20-2903(b), and amendments thereto, and in order to obtain the best qualified persons as nominees, the commission shall not limit its consideration of potential nominees to those persons whose names have been submitted to the commission or who have expressed a willingness to serve. The commission may authorize one or more members of the commission to tender a nomination to any qualified person in order to ascertain the person's willingness to serve if nominated, but any such tender of nomination shall be subject to final action of the commission under the conditions prescribed by ~~subsection (b)~~ of K.S.A. 20-2907(b), and amendments thereto.

(3) In order that a vacancy in the office of judge of the district court does not exist for an inordinate length of time, the commission shall conduct the business of selecting nominees for appointment to such office and certifying the same to the governor as promptly and expeditiously as possible, having due regard for the importance of selecting the best possible nominees. In no event shall the commission submit its nominations to the governor more than 45 days after the date the chief justice has notified the nominating commission that a vacancy is to be filled, unless the chief justice permits an extension of such time period.

(b) If there are not at least ~~two~~ *three* attorneys deemed qualified by the district judicial nominating commission who reside in the judicial district and who are willing to accept the nomination to fill a vacancy in a district judge position, the nominating commission need not limit its consideration of nominees to attorneys residing in the judicial district. In cases where there is one such attorney, such attorney shall be one of the nominees submitted to the governor. If an appointee is not a resident of the judicial district at the time of appointment to a district judge position, the appointee shall establish residency in the judicial district before taking office and shall maintain such residency while holding such office.

Sec. 12. K.S.A. 2015 Supp. 20-3020 is hereby amended to read as follows: 20-3020. (a) (1) On and after July 1, 2013, any vacancy occurring in the office of any judge of the court of appeals and any position to be open on the court of appeals as a result of enlargement of such court, or the retirement or failure of an incumbent to file such judge's declaration of candidacy to be retained in office as hereinafter required, or failure of a judge to be elected to be retained in office, shall be filled by appointment by the governor, with the consent of the senate, of a person possessing the qualifications of office.

(2) Whenever a vacancy occurs, will occur or position opens on the court of appeals, the clerk of the supreme court shall promptly give notice to the governor.

(3) *If the governor is making an appointment to the court of appeals, the governor shall make each applicant's name and city of residence available to the public whenever the governor stops accepting applications for such appointment, but not less than 10 days prior to making such appointment.*

(4) In event of the failure of the governor to make the appointment within 60 days from the date such vacancy occurred or position became open, the chief justice of the supreme court, with the consent of the senate, shall make the appointment of a person possessing the qualifications of office.

(5) *If the chief justice of the supreme court is making an appointment to the court of appeals, the chief justice shall make each applicant's name and city of residence available to the public whenever the chief justice stops accepting applications for such appointment, but not less than 10 days prior to making such appointment.*

~~(4)~~(6) Whenever a vacancy in the office of judge of the court of appeals exists at the time the appointment to fill such vacancy is made pursuant to this section, the appointment shall be effective at the time it is made, but where an appointment is made pursuant to this section to fill a vacancy which will occur at a future date, such appointment shall not take effect until such date.

(b) No person appointed pursuant to subsection (a) shall assume the

office of judge of the court of appeals until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this section. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.

(c) Persons who are appointed as judges of the court of appeals pursuant to K.S.A. 20-3005, prior to its repeal, and this section, shall commence the duties of office upon appointment and consent, and each judge shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals.

(d) Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.

Sec. 13. K.S.A. 2015 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), 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, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), 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) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2015 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or 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; and

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

(c) Except as provided in subsections (e) and (f), 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, 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 felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2015 Supp. 21-5406, 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 K.S.A. 8-142 *Fifth*, 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, prior to its repeal, 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.

(d) (1) 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, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed 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 second or subsequent violation of K.S.A. 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments thereto.

(e) 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, prior to its repeal, or K.S.A. 2015 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2015 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2015 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2015 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2015 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2015 Supp. 21-5510, and amendments thereto;

(7) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2015 Supp. 21-5604, and amendments thereto;

(8) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2015 Supp. 21-5601, and amendments thereto;

(9) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2015 Supp. 21-5602, and amendments thereto;

(10) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2015 Supp. 21-5401, and amendments thereto;

(11) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2015 Supp. 21-5402, and amendments thereto;

(12) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2015 Supp. 21-5403, and amendments thereto;

(13) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2015 Supp. 21-5404, and amendments thereto;

(14) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2015 Supp. 21-5405, and amendments thereto;

(15) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2015 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2015 Supp. 21-5505, and amendments thereto;

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

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

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

(g) (1) 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 prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

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

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

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

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

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

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, ~~2013~~ 2015, through ~~July 1, 2015~~ June 30, 2017, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) 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 prisoner review board.

(h) 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.

(i) 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. *If the case was ap-*

*pealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received.* 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. 2015 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 Kansas department for aging and disability 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;

(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; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2015 Supp. 75-7c01 et seq., 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.

(j) 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.

(k) (1) Subject to the disclosures required pursuant to subsection (i), 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.

(2) Notwithstanding the provisions of subsection (k)(1), and except as provided in K.S.A. 2015 Supp. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

(1) 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 for aging and disability 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 Kansas department for aging and disability 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 prosecutor, 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 com-



missioner, 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;

(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; or

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

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

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

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

Sec. 14. K.S.A. 2015 Supp. 22-2410 is hereby amended to read as follows: 22-2410. (a) Any person who has been arrested in this state may petition the district court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. When a petition for expungement is filed, the official court file shall be separated from the other records of the court, and shall be disclosed only to a judge of the court and members of the staff of the court designated by a judge of the district court, the prosecuting attorney, the arresting law enforcement agency, or any other person when authorized by a court order, subject to any conditions imposed by the order. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2015, through June 30, 2017, the supreme court may impose an additional charge, not to exceed \$19 per docket fee, to fund the costs of non-judicial personnel. The petition shall state:

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

No surcharge or fee shall be imposed to any person filing a petition pursuant to this section, who was arrested as a result of being a victim of identity theft under K.S.A. 21-4018, prior to its repeal, or K.S.A. 2015 Supp. 21-6107(a), and amendments thereto, or who has had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings or the charges have been dismissed. 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.

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

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

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

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

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order 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. *If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received.* If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interests of public welfare, the records should be available for any of the following purposes: (1) In any application for employment as a detective with a private detective agency, as defined in 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 Kansas department for aging and disability services;

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

(3) 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;

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

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

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

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

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

(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas bureau of investigation for the purposes of:

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

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

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

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

(i) The docket fee collected at the time the petition for expungement

is filed shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

Sec. 15. K.S.A. 2015 Supp. 22-3609 is hereby amended to read as follows: 22-3609. ~~(1)~~ (a) The defendant shall have the right to appeal to the district court of the county from any judgment of a municipal court which adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt. The appeal shall be assigned by the chief judge to a district judge. The appeal shall stay all further proceedings upon the judgment appealed from.

~~(2)~~ (b) An appeal to the district court shall be taken by filing, in the district court of the county in which the municipal court is located, a notice of appeal and any appearance bond required by the municipal court. Municipal court clerks are hereby authorized to accept notices of appeal and appearance bonds under this subsection and shall forward such notices and bonds to the district court. No appeal shall be filed until after the sentence has been imposed. No appeal shall be taken more than 14 days after the date the sentence is imposed.

~~(3)~~ (c) The notice of appeal shall designate the judgment or part of the judgment appealed from. The defendant shall cause notice of the appeal to be served upon the city attorney prosecuting the case. The judge whose judgment is appealed from or the clerk of the court, if there is one, shall certify the complaint and warrant to the district court of the county, but failure to do so shall not affect the validity of the appeal.

~~(4)~~ (d) Except as provided herein, the trial of municipal appeal cases shall be to the court unless a jury trial is requested in writing by the defendant not later than seven days after first notice of trial assignment is given to the defendant or such defendant's counsel. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such time requirement would cause undue hardship or prejudice to the defendant. A jury in a municipal appeal case shall consist of six members. All appeals taken by a defendant from a municipal judge in contempt findings, cigarette or tobacco infraction or traffic infraction cases shall be tried by the court.

~~(5)~~ (e) Notwithstanding the other provisions of this section, appeal from a conviction rendered pursuant to ~~subsection (b) of~~ K.S.A. 12-4416(b), and amendments thereto, shall be conducted only on the record of the stipulation of facts relating to the complaint.

(f) *At the conclusion of the case, the district court shall send notice of dismissal, conviction or acquittal to the municipal court clerk.*

New Sec. 16. If any provision of this bill or the application thereof to any person or circumstances is held unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the bill which can be given effect without the unconstitutional or invalid portion or application, and, to this end, the provisions of this bill are severable.

Sec. 17. K.S.A. 20-122, 20-123, 20-130, 20-132, 20-2904 and 20-2907 and K.S.A. 2015 Supp. 7-127, 12-4516, 12-4516d, 20-2909, 20-3020, 21-6614, 21-6614f, 22-2410 and 22-3609 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

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

\_\_\_\_\_  
SENATE adopted  
Conference Committee Report \_\_\_\_\_

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

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

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

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

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

APPROVED \_\_\_\_\_

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