

HOUSE BILL No. 2599

AN ACT concerning wildlife and parks; relating to the powers and duties of the secretary of wildlife and parks; relating to sport shooting ranges; relating to commercial guide services; concerning reports of disposition of certain prosecutions; amending K.S.A. 32-964 and 32-1054 and K.S.A. 2000 Supp. 21-4619 and repealing the existing sections; also repealing K.S.A. 32-964, as amended by section 2 of 2001 House Bill No. 2098, K.S.A. 32-1054, as amended by section 3 of 2001 House Bill No. 2098, and K.S.A. 2000 Supp. 21-4619, as amended by section 1 of 2001 House Bill No. 2098.

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

Section 1. K.S.A. 2000 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence.

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

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

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

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

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

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

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

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

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

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

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

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggra-

vated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto; (12) capital murder as defined in K.S.A. 21-3439 and amendments thereto; (13) murder in the first degree as defined in K.S.A. 21-3401 and amendments thereto; (14) murder in the second degree as defined in K.S.A. 21-3402 and amendments thereto; (15) voluntary manslaughter as defined in K.S.A. 21-3403 and amendments thereto; (16) involuntary manslaughter as defined in K.S.A. 21-3404 and amendments thereto; (17) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 2000 *Supp.* 21-3442 and amendments thereto; or (18) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

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

- (1) The defendant's full name;
- (2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (3) the defendant's sex, race and date of birth;
- (4) the crime for which the defendant was arrested, convicted or diverted;

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

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

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

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

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

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

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

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

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

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

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

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the

Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

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

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

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

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

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

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

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

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

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

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

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

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

(1) The person whose record was expunged;

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

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

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

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

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

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

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

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

(10) the Kansas sentencing commission;

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

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

(13) *the department of wildlife and parks and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a permit as a commercial guide or associate guide under K.S.A. 32-964, and amendments thereto.*

Sec. 2. K.S.A. 32-964 is hereby amended to read as follows: 32-964.

(a) As used in this section:

(1) “Commercial guide services” means providing, offering to provide, arranging for or assisting with hunting or fishing activities for others on a commercial basis, including but not limited to providing any one or more of the following when used in conjunction with or for hunting or fishing activities: Pack or riding livestock, transportation other than by commercial carrier, equipment or facilities.

(2) ~~“Provisional guide” means a person who, during the calendar year, performs commercial guide services for five or fewer days and receives \$500 or less for such services, as determined in accordance with rules and regulations of the secretary.~~ *“Commercial basis” means that the recipient of the services agrees to provide valuable consideration as compensation for the guide services, and the services are provided as part of a business relationship. Evidence of a business relationship includes, without limitation, advertisement of the guide services, written agreement of the terms of payment or services provided by an employee of a commercial guide. Providing guide services on land not owned or leased by the individual providing the services shall not by itself constitute evidence that the services are provided on a commercial basis.*

(3) Terms defined in K.S.A. 32-701 and amendments thereto have the meanings provided by that section.

(b) A valid commercial guide permit *or associate guide permit* is required to provide commercial guide services in this state.

(c) The provisions of subsection (b) do not apply to a person who:

(1) Possesses a controlled shooting area license and commercial guide services performed by the person are confined to the licensed controlled shooting area;

(2) owns private land and commercial guide services performed by the person are confined to lands owned by the individual;

(3) is a tenant, as defined by K.S.A. 32-937 and amendments thereto, and commercial guide services performed by the person are confined to farm or ranch land with respect to which the person is such a tenant; *or*

~~(4) is a provisional guide registered with the secretary;~~
~~(5) (4) provides commercial guide services only in cooperation with a department approved activity; or~~
~~(6) does not receive monetary compensation for providing commercial guide services an educational or not-for-profit event approved by the secretary.~~

(d) Any person who desires to provide commercial guide services shall apply to the secretary for a commercial guide permit. The application shall give the name and address of the applicant, the type of commercial guide services to be provided, the area of the state where guide services would occur, a listing of facilities proposed for use, a listing of equipment to be available to the commercial guide service customers, including pack or riding livestock, and such other information as required by the secretary. The fee prescribed pursuant to K.S.A. 32-988 and amendments thereto shall accompany the application.

(e) The secretary may issue a commercial guide permit if the secretary determines that:

- (1) The applicant possesses adequate knowledge of wildlife and parks laws of this state and rules and regulations of the secretary;
- (2) the applicant possesses adequate knowledge of hunting or fishing skills; ~~and~~
- (3) *the applicant is 16 or more years of age; and*
- (4) the application is complete and accurate.

The secretary may require an applicant to successfully complete a written or oral examination before issuing a commercial guide permit *and may establish an annual date by which applications must be submitted.*

(f) A commercial guide permittee shall make such reports of permitted activities to the secretary as required by rule and regulation adopted by the secretary in accordance with K.S.A. 32-805 and amendments thereto.

(g) A commercial guide permittee may employ one or more associate guides to conduct services authorized by the commercial guide permit while the associate guide is in the employment of the commercial guide permittee. ~~An A commercial guide permit or associate guide permit is required for any individual so employed by a commercial guide permittee.~~

(h) Any individual who desires to obtain an associate guide permit shall apply to the secretary. The application shall give the name and address of the applicant; the name, address and commercial guide permit number of the commercial guide by whom the applicant would be employed; the notarized signature of such commercial guide permittee; and such other information as required by the secretary. The fee prescribed pursuant to K.S.A. 32-988 and amendments thereto shall accompany the application.

(i) The secretary may issue an associate guide permit if the secretary determines that:

- (1) The applicant possesses adequate knowledge of wildlife and parks laws of this state and rules and regulations of the secretary;
- (2) the applicant possesses adequate knowledge of hunting or fishing skills; and
- (3) the application is complete and accurate.

The secretary may require an applicant to successfully complete a written or oral examination prior to issuance of an associate guide permit *and may establish an annual date by which applications must be submitted.*

(j) Commercial guide permits and associate guide permits expire on December 31 of each year.

(k) A commercial guide permittee; *or associate guide permittee* ~~or provisional guide~~ may assist with the legal taking of wildlife while providing commercial guide services but shall not perform the actual taking or shooting of wildlife for the guided person.

(l) Unless exempt pursuant to K.S.A. 32-919 and amendments thereto, a commercial guide permittee; *or associate guide permittee* ~~or provisional guide~~ shall be required to possess a valid hunting license issued to such permittee ~~or guide~~ in order to conduct hunting activities. Unless exempt pursuant to K.S.A. 32-911 and amendments thereto, a commercial guide permittee; *or associate guide permittee* ~~or provisional guide~~ shall be required to possess a valid fishing license issued to such permittee ~~or guide~~ in order to conduct fishing activities. A commercial guide permittee; *or associate guide permittee* ~~or provisional guide~~ shall

be required to possess any stamp as required by law to engage in the activity.

(m) *It shall be unlawful to perform commercial guide services without having in possession the written permission of the owner or the person in lawful possession of the land where the commercial guide services are performed.*

(n) The secretary shall adopt, in accordance with K.S.A. 32-805 and amendments thereto, such rules and regulations as necessary to administer and govern commercial guide services ~~and provisional guides~~, including such restrictions and conditions as required for wildlife resource protection and to protect the public interest and public safety.

~~(n) (o)~~ In addition to any other penalty prescribed by law, ~~failure to provide required reports, conviction of a felony within the previous five years or failure to comply with the wildlife and parks laws of this state or rules and regulations of the secretary shall be grounds for the secretary to the secretary, in accordance with the Kansas administrative procedure act, may refuse to issue, refuse to renew, suspend or revoke a commercial guide permit or an associate guide permit. Any such refusal, suspension or revocation shall be in accordance with the Kansas administrative procedure act if the secretary finds that the applicant has:~~

(1) *Failed to comply with the wildlife and parks laws of this state or rules and regulations of the secretary;*

(2) *been convicted of a violation of the fish, wildlife, boating or parks laws of another jurisdiction;*

(3) *been convicted of a felony involving the use of violence or the use of weapons;*

(4) *been convicted of any other felony within the previous five years;*

or

(5) *failed to provide required reports.*
(p) *The secretary upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of applicants for commercial guide permits and associate guide permits.*

~~(q)~~ (q) The secretary may prepare a general publication listing commercial guide permittees and services offered by the permittees for the purpose of assisting the public in securing the services of a commercial guide. No commercial guide permittee shall be included in such publication without the written consent of the permittee.

Sec. 3. K.S.A. 32-1054 is hereby amended to read as follows: 32-1054. It shall be the duty of every judge or clerk of the court before whom any prosecution for a violation of the wildlife and parks laws of this state or rules and regulations of the secretary is commenced or goes on appeal, within 20 days after ~~the trial or dismissal~~ *disposition* thereof, to report in writing to the department the result thereof and the amount of fine collected, if any.

New Sec. 4. As used in this act:

(a) “Generally accepted operation practice” means those safety practices adopted, pursuant to rules and regulations, by the Kansas department of wildlife and parks and established by a nationally recognized nonprofit membership organization that provides voluntary firearms safety programs which include training individuals in the safe handling and use of firearms and which practices are developed with consideration of all information reasonably available regarding the operation of shooting ranges.

(b) “Local unit of government” means a county, city, township or any other political subdivision of the state, or any agency, authority, institution or instrumentality thereof.

(c) “Person” means an individual, proprietorship, partnership, corporation, club, governmental entity or other legal entity.

(d) “Sport shooting range” or “range” means an area designed and operated for the use of archery, rifles, shotguns, pistols, semiautomatic firearms, skeet, trap, black powder or any other similar sport shooting.

New Sec. 5. (a) Notwithstanding any other provisions of law, and in addition to other protections provided in this act, a person who owns, operates, manages or uses a sport shooting range that conforms to generally accepted operation practices in the state is not subject to civil lia-

bility or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control laws or ordinances or resolutions that applied to the range and its operation at the time of construction and initial operation of the range.

(b) In addition to any civil protection provided by the act, a person who owns, operates, manages or uses a sport shooting range that conforms to generally accepted operation practices is not subject to an action for nuisance, and a court of the state shall not enjoin or restrain the use or operation of a range on the basis of noise or noise pollution, if the range is in compliance with any noise control laws or ordinances or resolutions that applied to the range and its operation at the time of construction or initial operation of the range.

(c) Rules or regulations adopted by any state department or agency for limiting levels of noise in terms of decibel level which may occur in the outdoor atmosphere do not apply to a sport shooting range immune from liability under this act. However, this subsection does not constrict the application of any provision of generally accepted operation practices.

(d) A person who acquires title to real property adversely affected by the use of property with a permanently located and improved sport shooting range constructed and initially operated prior to the time the person acquires title shall not maintain a nuisance action on the basis of noise or noise pollution or based upon known or inherent dangers against the person who owns, operates or uses the range to restrain, enjoin, or impede the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range.

New Sec. 6. (a) A sport shooting range that is operated and is not in violation of state law at the time of the enactment of an ordinance or resolution shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or resolution or amendment to an existing ordinance or resolution.

(b) A sport shooting range that is in existence as of the effective date of this act and operates in compliance with generally accepted operation practices, even if not in compliance with an ordinance or resolution of a local unit of government, shall be permitted to do all of the following within its preexisting geographic boundaries if in compliance with generally accepted operation practices:

(1) Repair, remodel or reinforce any improvement or facilities or building or structure as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;

(2) reconstruct, repair, rebuild or resume the use of a facility or building damaged by fire, collapse, explosion, act of God or act of war occurring after the effective date of this act. The reconstruction, repair or restoration shall be completed within one year following the date of the damage or settlement of any property damage claim. If reconstruction, repair or restoration is not completed within one year as provided in this subsection, such reconstruction, repair or restoration may be terminated in the discretion of the local unit of government; or

(3) do anything authorized under generally accepted operation practices, including, but not limited to:

(A) Expand or enhance its membership or opportunities for public participation; and

(B) reasonably expand or increase facilities or activities.

New Sec. 7. (a) Except as otherwise provided, the provisions of this act shall not prohibit a local unit of government from regulating the location and construction of a sport shooting range.

(b) No person or governmental entity may take title to property which has a permanently located and improved sport shooting range, by condemnation, eminent domain or similar process when the proposed use of said property would be for shooting related activities or recreational activities or for private or commercial development. However, this provision does not limit governmental exercise of eminent domain or easement necessary for infrastructure additions or improvements, such as highways, waterways or utilities.

New Sec. 8. The secretary of the Kansas department of wildlife and parks is hereby authorized to adopt rules and regulations necessary to

implement the provisions of this act. Rules and regulations establishing generally accepted operation practices shall be adopted and be in effect on or before January 1, 2002.

Sec. 9. K.S.A. 32-964 and 32-1054, K.S.A. 2000 Supp. 21-4619, K.S.A. 32-964, as amended by section 2 of 2001 House Bill No. 2098, K.S.A. 32-1054, as amended by section 3 of 2001 House Bill No. 2098, and K.S.A. 2000 Supp. 21-4619, as amended by section 1 of 2001 House Bill No. 2098, are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

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

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.