

## CHAPTER 60

( HB 308 )

AN ACT relating to background checks.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

- (1) *A court that orders a commitment or makes a finding or adjudication under which a person becomes subject to the provisions of 18 U.S.C. sec. 922(d)(4) and (g)(4) shall order the circuit clerk to forward the person's name and non-clinical identifying information, including the person's Social Security number and date of birth, along with a copy of the order of commitment to the Department of Kentucky State Police, which in turn shall forward the information to the Federal Bureau of Investigation, its successor agency, or agency designated by the Federal Bureau of Investigation, for inclusion in the National Instant Criminal Background Check System database. The court shall also notify the person of the prohibitions of 18 U.S.C. sec. 922(d)(4) and (g)(4).*
- (2) *A person who is subject to the provisions of 18 U.S.C. sec. 922(d)(4) and (g)(4) because of a commitment, finding, or adjudication that occurred in this state may petition the court in which such commitment, finding, or adjudication occurred to remove, pursuant to Section 105(a) of Pub. L. No. 110-180, the disabilities imposed under 18 U.S.C. sec. 922(d)(4) and (g)(4). A copy of the petition for relief shall also be served on the director of the Division of Behavioral Health and the county attorney of the county in which the original commitment, finding, or adjudication occurred. The director of the Division of Behavioral Health and the county attorney may, as each deems appropriate, appear, support, object to, or present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner concerning:
 
  - (a) *The circumstances of the original commitment, finding, or adjudication;*
  - (b) *The petitioner's mental health and criminal history records, if any;*
  - (c) *The petitioner's reputation;*
  - (d) *The petitioner's date of birth and Social Security number; and*
  - (e) *Changes in the petitioner's condition or circumstances relevant to the relief sought.**The court shall grant the petition for relief if it finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but it shall remain confidential and be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under this section no more than once every two (2) years.**
- (3) *When the court issues an order granting a petition for relief under subsection (2) of this section, the circuit clerk shall immediately forward a copy of the order to the Department of Kentucky State Police, which in turn shall immediately forward a copy to the Federal Bureau of Investigation, or its successor agency, for updating of the National Instant Criminal Background Check System database and shall remove all information in any database over which the department exercises control relating to the person whose relief from disability is granted and shall immediately destroy all paper copies of the order of commitment and other documents relating to the matter.*
- (4) *If a petition is granted under this section, the order, finding, or adjudication for which relief is granted shall, pursuant to Section 105(a) of Pub. L. No. 110-180, be deemed not to have occurred for purposes of 18 U.S.C. sec. 922(d)(4) and (g)(4).*
- (5) *The Department of Kentucky State Police shall not use or permit the use of the records or information obtained or retained pursuant to this section for any purpose not specified in this section.*
- (6) *The provisions of this section shall supersede any other statute to the contrary for the purposes set forth in this section but otherwise shall be held and construed as ancillary and supplemental to any other statute.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
- (a) *"Fingerprint card" means the standard Federal Bureau of Investigation FD-258 fingerprint card;*
  - (b) *"Fingerprint-supported background check" means a statewide search of the centralized criminal history record information system created and maintained by the Commonwealth utilizing the fingerprints of the subject of the background check. This shall not include a national check by the Federal Bureau of Investigation; and*
  - (c) *"Name-based background check" means a statewide search of the centralized criminal history record information system created and maintained by the Commonwealth utilizing the name, date of birth, and Social Security number of the subject of the background check. This shall not include a national check by the Federal Bureau of Investigation.*
- (2) *Any other provision of law to the contrary notwithstanding, a person may request the Department of Kentucky State Police to conduct a name-based or fingerprint-supported background check of himself or herself and release the results to any person designated by the requester.*
- (3) *A person requesting a fingerprint-supported background check on himself or herself shall be fingerprinted by a law enforcement agency or other agency approved by the Department of Kentucky State Police to submit fingerprints. The fingerprinting agency shall forward the fingerprint card to the Department of Kentucky State Police. The fingerprinting agency may charge a fee, not to exceed the actual cost of processing the request.*
- (4) *A request for a name-based or fingerprint-supported background check shall be submitted on forms approved by the Department of Kentucky State Police.*
- (5) *The Department of Kentucky State Police may charge a fee for conducting a background check, not to exceed the actual cost of processing the request, to be paid by the requester.*
- (6) *The Department of Kentucky State Police shall promulgate administrative regulations to implement the provisions of this section.*

Signed by Governor March 16, 2011.