

AN ACT relating to victims of identity theft.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

*(1) Any person who is a victim of the crime of theft of the identity of another under KRS 514.160 may petition the court for the expungement of any records relating to a criminal charge if:*

*(a) The charges against the person were a result of the person's name or other identification being appropriated or used without his or her consent or authorization to commit the offense; and*

*(b) As a direct result of the theft of the person's identity, the person was charged with a traffic infraction, traffic infraction not otherwise classified as a misdemeanor or violation, violation, misdemeanor, or felony; and*

*1. The person was subsequently found not guilty of the offenses charged;*

*2. The charges against the person were dismissed with prejudice; or*

*3. The charges were voided or amended in the criminal action.*

*(2) Any person who meets the requirements of subsection (1) of this section may file a petition for expungement of a criminal record within thirty (30) days of an order of acquittal or dismissal by the court.*

*(3) Any person seeking to expunge a criminal record pursuant to this section shall not be required to file a petition for expungement as required under KRS 431.076 or 431.078, but shall petition for expungement on a form prescribed by the Administrative Office of the Courts.*

*(4) Any petition for the expungement of a criminal record filed pursuant to this section shall include:*

*(a) A sworn statement by the petitioner averring that he or she was the victim of the crime of theft of the identity of another under KRS 514.160; and*

(b) Any documents or information necessary to establish that:

1. The petitioner was a victim under KRS 514.160; and
2. The charge or conviction that the petitioner seeks to expunge was the result of another person using the petitioner's personal identifying information to commit the underlying offense or violation.

These documents may include but are not limited to declarations, affidavits, police reports, copies of court orders, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court.

(5) The court shall order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if:

(a) There are no current charges or proceedings pending relating to the matter for which the expungement is sought; and

(b) The court finds that a review of the documents and information provided to the court by the petitioner meets the requirements of subsection (1) of this section.

(6) (a) Any person who is a victim of the crime of theft of the identity of another under KRS 514.160 and who is currently facing criminal charges as a result of this theft, may petition the court for an expedited order of expungement. The court shall grant the motion for an expedited order of expungement if:

1. The person has been charged with an offense currently pending before the court;
2. The prosecutor does not object to the motion; and
3. After a review of the record, the court finds there is reasonable cause to believe that the person seeking an expedited order of expungement is a victim under KRS 514.160 and that, as a result, he or she is

innocent of the charges currently pending against him or her.

(b) Upon granting the motion for an expedited order of expungement and when entering an order adjudicating the matter currently before it, the court shall also order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records.

(7) Upon the entry of an order to expunge the petitioner's records pursuant to subsection (5) of this section or an expedited order of expungement under subsection (6) of this section:

(a) The proceedings in the case shall be deemed never to have occurred;

(b) The court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks;

(c) Any person and the court may properly reply that no record exists with respect to the person upon any inquiry in the matter; and

(d) The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application, unless required by federal or state law or regulation.

(8) Copies of the order of expungement shall be sent to each agency or official named therein, and inspection of the records included in the order by persons who are not court, law enforcement, prosecutorial, or defense personnel may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.

(9) Any insurance company that charged an additional premium based on insurance points assessed against a policyholder as a result of a violation, charge, or conviction that was expunged under this section shall refund those additional

premiums to the policyholder upon notification of the expungement.

(10) This section shall be deemed to be retroactive and any petition for the expungement of a criminal record pursuant to this section shall be made in the District or Circuit Court in which the charges were initially filed. If the petitioner wishes to expunge a criminal record that was initiated prior to the inception of the District Court, he or she may file a petition in the District Court in the county in which he or she now resides.

(11) As used in this section, "violation" has the same meaning as in KRS 500.080.

(12) Notwithstanding any provision to the law contrary, no court costs or other fees, from the court or any other agency, shall be required of a person filing a petition for expungement under this section.

(13) The Administrative Office of the Courts shall promulgate any administrative regulations necessary to implement this section.

➔Section 2. KRS 527.040 is amended to read as follows:

(1) A person is guilty of possession of a firearm by a convicted felon when he possesses, manufactures, or transports a firearm when he has been convicted of a felony, as defined by the laws of the jurisdiction in which he was convicted, in any state or federal court and has not:

(a) Been granted a full pardon by the Governor or by the President of the United States;

(b) Been granted relief by the United States Secretary of the Treasury pursuant to the Federal Gun Control Act of 1968, as amended;

(c) Had his or her record expunged by any court of the Commonwealth pursuant to Section 1 of this Act.

(2) Possession of a firearm by a convicted felon is a Class D felony unless the firearm possessed is a handgun in which case it is a Class C felony.

(3) The provisions of this section shall apply to any youthful offender convicted of a

felony offense under the laws of this Commonwealth. The exceptions contained in KRS 527.100 prohibiting possession of a handgun by a minor shall not apply to this section.

- (4) The provisions of this section with respect to handguns, shall apply only to persons convicted after January 1, 1975, and with respect to other firearms, to persons convicted after July 15, 1994.