

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 48
91ST GENERAL ASSEMBLY

Reported from the Committee on Social Services, Medicaid and the Elderly, May 3, 2001, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 48 Do Pass.

TED WEDEL, Chief Clerk

0178L.07C

AN ACT

To repeal sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.936 and 630.170, RSMo 2000, relating to dependent care, and to enact in lieu thereof eleven new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.936 and 630.170, RSMo 2000, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.922, 210.927, 210.930, 210.936 and 630.170, to read as follows:

210.900. 1. Sections 210.900 to 210.936 shall be known and may be cited as the "Family Care Safety Act".

2. As used in sections 210.900 to 210.936, the following terms shall mean:

(1) "Child-care provider", any licensed or license-exempt child-care home, any licensed or license-exempt child-care center, child-placing agency, residential care facility for children, group home, foster family group home, foster family home, employment agency that refers a child-care worker to parents or guardians as defined in section 289.005, RSMo. The term "child-care provider" does not include summer camps or voluntary associations designed primarily for recreational or educational purposes;

(2) "Child-care worker", any person who is employed by a child-care provider, or receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for child-care services;

(3) "Department", the department of health;

(4) "Elder-care provider", any operator licensed pursuant to chapter 198, RSMo, **or any person, corporation, or association who provides in-home services under contract with the department of social services**, or any employer of nurses or nursing assistants of home health agencies licensed pursuant to sections 197.400 to 197.477, RSMo, or any nursing assistants employed by a hospice pursuant to

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

sections 197.250 to 197.280, RSMo, or that portion of a hospital for which subdivision (3) of subsection 1 of section 198.012, RSMo, applies;

(5) "Elder-care worker", any person who is employed by an elder-care provider, or who receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for elder-care services;

(6) "Patrol", the Missouri state highway patrol;

(7) **"Employer", any child care provider, elder care provider, or personal care provider as defined in this section;**

~~[(7)]~~ (8) **"Personal-care attendant" or "personal-care worker", a person who performs routine services or supports necessary for a person with a physical or mental disability to enter and maintain employment or to live independently;**

(9) **"Personal-care provider", any person, corporation, or association who provides personal care services or supports under contract with the department of mental health, the division of aging, the department of health or the department of elementary and secondary education;**

(10) "Related child care", child care provided only to a child or children by such child's or children's grandparents, great-grandparents, aunts or uncles, or siblings living in a residence separate from the child or children;

~~[(8)]~~ (11) "Related elder care", care provided only to an elder by an adult child, a spouse, a grandchild, a great-grandchild or a sibling of such elder.

210.903. 1. To protect children [and], the elderly, **and disabled individuals** in this state, and to promote family and community safety by providing information concerning family caregivers, there is hereby established within the department of health a "Family Care Safety Registry and Access Line" which shall be available by January 1, 2001.

2. The family care safety registry shall contain information on child-care workers' [and], elder-care workers', **and personal-care workers'** background and on child-care [and], elder-care **and personal care** providers through:

(1) The patrol's criminal record check system pursuant to section 43.540, RSMo, including state and national information, to the extent possible;

(2) Probable cause findings of abuse and neglect pursuant to sections 210.109 to 210.183 **or, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant to section 570.145, RSMo;**

(3) The division of aging's employee disqualification list pursuant to section 660.315, RSMo;

(4) **As of January 1, 2003, the department of mental health's employee disqualification registry;**

(5) Foster parent licensure denials, revocations and **involuntary** suspensions pursuant to section 210.496;

~~[(5)]~~ (6) Child-care facility license denials, revocations and suspensions pursuant to sections 210.201 to 210.259; and

~~[(6)]~~ (7) Residential living facility and nursing home license denials, revocations, suspensions and probationary status pursuant to chapter 198, RSMo.

210.906. 1. Every child-care worker or elder-care worker hired on or after January 1, 2001, **or personal care worker hired on or after January 1, 2002**, shall complete a registration form provided

by the department. The department shall make such forms available no later than January 1, 2001, and may, by rule, determine the specific content of such form, but every form shall:

- (1) Request the valid Social Security number of the applicant;
- (2) Include information on the person's right to appeal the information contained in the registry pursuant to section 210.912;
- (3) Contain the signed consent of the applicant for the background checks required pursuant to this section; and
- (4) Contain the signed consent for the release of information contained in the background check for employment purposes only.

2. [Any person] **Every child-care worker or elder-care worker** hired on or after January 1, 2001, **and every personal care worker hired on or after January 1, 2002**, shall complete a registration form within fifteen days of the beginning of such person's employment. Any person employed as a child-care [worker or], elder-care **or personal-care** worker who fails to submit a completed registration form to the department of health as required by sections 210.900 to 210.936 **and any employer under contract with the state who fails to confirm an employee's registration** without good cause, as determined by the department, is guilty of a class B misdemeanor.

3. The costs of the criminal background check may be paid by the individual applicant, or by the provider if the applicant is so employed, or for those applicants receiving public assistance, by the state through the terms of the self-sufficiency pact pursuant to section 208.325, RSMo. Any moneys remitted to the patrol for the costs of the criminal background check shall be deposited to the credit of the criminal record system fund as required by section 43.530, RSMo.

4. Any person not required to register pursuant to the provisions of sections 210.900 to 210.936 may also be included in the registry if such person voluntarily applies to the department for registration and meets the requirements of this section and section 210.909, including submitting to the background checks in subsection 1 of section 210.909.

5. The provisions of sections 210.900 to 210.936 shall not extend to related child care [and], related elder care **or related personal-care**.

210.909. 1. Upon submission of a completed registration form by a child-care worker[or], elder-care worker **or personal-care attendant**, the department, [in coordination with the department of social services,] shall:

(1) Determine if a probable cause finding of child abuse or neglect involving the applicant has been recorded pursuant to [section 210.145] **sections 210.109 to 210.183 or, as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo;**

(2) Determine if the applicant has been refused licensure or has experienced **involuntary** licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section 660.315, RSMo;

(4) **As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;**

[4)] (5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether the applicant has any conviction, plea of guilty or nolo contendere, or a suspended execution of sentence to a [felony] charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568, 569, 573, 575 and

578, RSMo; and

[(5)] (6) If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo.

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any felony convictions, employee disqualification listings, [pursuant to section 660.315, RSMo,] **registry listings**, probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the determination recorded on the registry pursuant to this section.

210.915. The department of corrections, the department of public safety [and], the department of social services **and the department of mental health** shall collaborate with the department to compare records on child-care [and], elder-care **and personal-care** workers, and the records of persons with criminal convictions and the background checks pursuant to subdivisions (1) to (6) of subsection 2 of section 210.903, and to enter into any interagency agreements necessary to facilitate the receipt of such information and the ongoing updating of such information. The department[, in coordination with the department of social services,] shall promulgate rules and regulations concerning such updating, including subsequent background reviews as listed in subsection 1 of section 210.909.

210.921. 1. The department shall not provide any registry information pursuant to this section unless the department obtains [by asking for] the name and address of the person calling, and determines that the inquiry is for employment purposes only. For purposes of sections 210.900 to 210.936, "employment purposes" includes direct employer-employee relationships, prospective employer-employee relationships, and screening and interviewing of persons or facilities by those persons contemplating the placement of an individual in a [child- or] **child-care, elder-care or personal-care** setting. Disclosure of background information concerning a given applicant recorded by the department in the registry shall be limited to:

(1) Confirming whether the individual is listed in the registry; and

(2) Indicating whether the individual has been listed or named in any of the background checks listed in subsection 2 of section 210.903. If such individual has been so listed, the department of health shall only disclose the name of the background check in which the individual has been identified. **With the exception of any agency licensed by the state to provide child care, elder care or personal care which shall receive specific information immediately if requested**, any specific information related to such background check shall only be disclosed after the department has received a signed request from the person calling, with the person's name, address and reason for requesting the information.

2. Any person requesting registry information shall be informed that the registry information provided pursuant to this section consists only of information relative to the state of Missouri and does not include information from other states or information that may be available from other states.

3. Any person who uses the information obtained from the registry for any purpose other than that specifically provided for in sections 210.900 to 210.936 is guilty of a class B misdemeanor.

4. When any registry information is disclosed pursuant to subdivision (2) of subsection 1 of this section, the department shall notify the registrant of the name and address of the person making the inquiry.

5. The department of health staff providing information pursuant to sections 210.900 to 210.936 shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions; provided, however, any department of health staff person who releases registry information in bad faith or with ill intent shall not have immunity from any liability, civil or criminal. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the release of registry information. The department is prohibited from selling the registry or any portion of the registry for any purpose including "employment purposes" as defined in subsection 1 of this section.

210.922. The department may use the registry information for any purpose necessary to carry out the duties assigned to the department pursuant to this chapter and chapters 190, 195, 197, 198 and 660, RSMo.

210.927. The department of health shall make an annual report, no later than July first of each year, to the speaker of the house of representatives and the president pro tem of the senate on the operation of the family care safety registry and toll-free telephone service, including data on the number of information requests received from the public, identification of any barriers encountered in administering the provisions of sections 210.900 to 210.936, recommendations for removing or minimizing the barriers so identified, and any recommendations for improving the delivery of information on child-care [workers and], elder-care **and personal-care** workers to the public.

210.930. By January 1, 2001, the department shall provide a report to the speaker of the house and president pro tem of the senate with recommendations on:

(1) Ensuring that thorough background checks are conducted on all providers pursuant to sections 210.900 to 210.936 without duplicating background checks that are required or have been conducted pursuant to other provisions in state law;

(2) Ensuring that data obtained from background checks which are currently available or may be required by law after August 28, 1999, are included in the registry;

(3) The feasibility of transferring the responsibility of conducting background checks on providers to the registry;

(4) [Providing information and access to the registry for personal care attendants for the disabled;

(5)] Including a national screening process on a voluntary and mandatory basis within the registry; and

[(6)] **(5)** Effecting Internet access to the registry.

210.936. For purposes of providing background information pursuant to sections 210.900 to 210.936, reports and related information pursuant to sections 198.070 and 198.090, RSMo, **sections 210.109 to 210.183, section 630.170, RSMo, and section 660.317, RSMo,** and sections 660.300 to 660.315, RSMo, shall be deemed public records.

630.170. 1. A person convicted of any crime [under] **pursuant to** section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility or day program operated, funded or licensed by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632, RSMo.

2. A person convicted of any felony offense against persons as defined in chapter 565, RSMo; of any felony sexual offense as defined in chapter 566, RSMo; of any felony offense defined in section 568.045, 568.050, 568.060, 569.020, 569.030, 569.040 or 569.050, RSMo, or of an equivalent felony offense shall be disqualified from holding any direct-care position in any public or private facility, day

program, residential facility or specialized service operated, funded or licensed by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

3. Any person disqualified [under] **pursuant to** the provisions of subsection 1 or 2 of this section may appeal the disqualification to the director of the department or the director's designee. The request shall be written and may not be made more than once every twelve months. The request may be granted by the director or designee if in the judgment of the director or designee a clear showing has been made by written submission only, that the person will not commit any additional acts for which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident or client of a facility, program or service. The director or designee may grant the appeal subject to any conditions deemed appropriate and failure to comply with such terms may result in the person again being disqualified. Decisions by the director or designee [under] **pursuant to** the provisions of this subsection shall not be subject to appeal. The right to appeal [under] **pursuant to** this subsection shall not apply to persons convicted of any crime [under] **pursuant to** the provisions of chapter 566 or 568, RSMo, or section 565.020 or 565.021, RSMo.

4. The department may maintain a disqualification registry and place on the registry the names of any persons who have been finally determined by the department to be disqualified pursuant to this section, or who have had administrative substantiations made against them for abuse or neglect pursuant to department rule. Such list shall reflect that the person is barred from holding any position in any public or private facility or day program operated, funded or licensed by the department, or any mental health facility or mental health program in which persons are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

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