

FIRST REGULAR SESSION

SENATE BILL NO. 533

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1590S.02I

AN ACT

To repeal section 660.315, RSMo, and to enact in lieu thereof one new section relating to the employee disqualification list, with penalty provisions.

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

Section A. Section 660.315, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 660.315, to read as follows:

660.315. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his or her last known address that:

(1) An allegation has been made against the person, the substance of the allegation and that an investigation has been conducted which tends to substantiate the allegation;

(2) The person's name will be included in the employee disqualification list of the department;

(3) The consequences of being so listed including the length of time to be listed; and

(4) The person's rights and the procedure to challenge the allegation.

2. If no reply has been received within thirty days of mailing the notice, the department may include the name of such person on its list. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director or the director's designee, based upon the criteria contained in subsection 9 of this section.

3. If the person so notified wishes to challenge the allegation, such person may file an application for a hearing with the department. The department shall grant the application within thirty days after receipt by the department and set the matter for hearing, or the department shall notify the applicant that, after review, the allegation has been held to be unfounded and the applicant's name will not be listed.

4. If a person's name is included on the employee disqualification list without **the**

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

notice by the department **as provided in subsection 1 of this section**, such person may file a request with the department for removal of the name or for a hearing. Within thirty days after receipt of the request, the department shall either remove the name from the list or grant a hearing and set a date therefor.

5. Any hearing shall be conducted in the county of the person's residence by the director of the department or the director's designee. The provisions of chapter 536, RSMo, for a contested case except those provisions or amendments which are in conflict with this section, shall apply to and govern the proceedings contained in this section and the rights and duties of the parties involved. The person appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

6. Upon the record made at the hearing, the director of the department or the director's designee shall determine all questions presented and shall determine whether the person shall be listed on the employee disqualification list. The director of the department or the director's designee shall clearly state the reasons for his or her decision and shall include a statement of findings of fact and conclusions of law pertinent to the questions in issue.

7. A person aggrieved by the decision following the hearing shall be informed of his or her right to seek judicial review as provided under chapter 536, RSMo. If the person fails to appeal the director's findings, those findings shall constitute a final determination that the person shall be placed on the employee disqualification list.

8. A decision by the director shall be inadmissible in any civil action brought against a facility or the in-home services provider agency and arising out of the facts and circumstances which brought about the employment disqualification proceeding, unless the civil action is brought against the facility or the in-home services provider agency by the department of health and senior services or one of its divisions.

9. When any person is found to be working while on the employee disqualification list in a position for which employment is prohibited by such placement, the director shall extend such person's placement on the employee disqualification list for a period of one year. The director's action in extending placement on the employee disqualification list for one year under this subsection is not subject to appeal. Further, any person who while on the employee disqualification list knowingly works in any position for which employment is prohibited by such placement on the employee disqualification list is guilty of a class A misdemeanor.

10. The length of time the person's name shall appear on the employee disqualification list shall be determined by the director of the department of health and senior services or the director's designee, based upon the following:

(1) Whether the person acted recklessly or knowingly, as defined in chapter 562, RSMo;

(2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the imminent danger to the health, safety or welfare of a resident or in-home services client;

(3) The degree of misappropriation of the property or funds, or falsification of any documents for service delivery of an in-home services client;

(4) Whether the person has previously been listed on the employee disqualification list;

(5) Any mitigating circumstances;

(6) Any aggravating circumstances; and

(7) Whether alternative sanctions resulting in conditions of continued employment are appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions of employment may include, but are not limited to, additional training and employee counseling. Conditional employment shall terminate upon the expiration of the designated length of time and the person's submitting documentation which fulfills the department of health and senior services' requirements.

[10.] 11. The removal of any person's name from the list under this section shall not prevent the director from keeping records of all acts finally determined to have occurred under this section.

[11.] 12. The department shall provide the list maintained pursuant to this section to other state departments upon request and to any person, corporation or association who:

(1) Is licensed as an operator under chapter 198, RSMo;

(2) Provides in-home services under contract with the department;

(3) Employs nurses and nursing assistants for temporary or intermittent placement in health care facilities;

(4) Is approved by the department to issue certificates for nursing assistants training; or

(5) Is an entity licensed under chapter 197, RSMo.

The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing.

[12.] 13. No person, corporation or association who received the employee disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the

person whose name is listed on the employee disqualification list.

[13.] 14. Any employer who is required to discharge an employee because the employee was placed on a disqualification list maintained by the department of health and senior services after the date of hire shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo.

[14.] 15. Any person who has been listed on the employee disqualification list may request that the director remove his or her name from the employee disqualification list. The request shall be written and may not be made more than once every twelve months. The request will be granted by the director upon a clear showing, by written submission only, that the person will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any documents of service delivery to an in-home services client. The director may make conditional the removal of a person's name from the list on any terms that the director deems appropriate, and failure to comply with such terms may result in the person's name being relisted. The director's determination of whether to remove the person's name from the list is not subject to appeal.

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