

SECOND REGULAR SESSION

SENATE BILL NO. 718

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time January 30, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5438S.011

AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof one new section relating to the employment disqualification registry.

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

Section A. Section 630.170, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 630.170, to read as follows:

630.170. 1. A person who is listed on the department of mental health
2 disqualification registry pursuant to this section, who is listed on the department
3 of social services or the department of health and senior services employee
4 disqualification list pursuant to section 660.315, or who has been convicted of or
5 pled guilty or nolo contendere to any crime pursuant to section 565.210, 565.212,
6 or 565.214, or section 630.155 or 630.160 shall be disqualified from holding any
7 position in any public or private facility [or], day program, **residential facility,**
8 **or specialized service** operated, licensed, certified, accredited, in
9 **possession of deemed status, or** funded [or licensed] by the department or in
10 any mental health facility or mental health program in which people are admitted
11 on a voluntary or involuntary basis or are civilly detained pursuant to chapter
12 632.

13 2. A person who has been convicted of or pled guilty or nolo contendere
14 to any felony offense against persons as defined in chapter 565; any felony sexual
15 offense as defined in chapter 566; any felony offense defined in section 568.020,
16 568.045, 568.050, 568.060, 569.020, 569.025, 569.030, 569.035, 569.040, 569.050,
17 569.070, or 569.160, or of an equivalent felony offense, or who has been convicted
18 of or pled guilty or nolo contendere to any violation of subsection 3 of section
19 198.070, or has been convicted of or pled guilty or nolo contendere to any offense

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

20 requiring registration under section 589.400, shall be disqualified from holding
21 any direct-care position in any public or private facility, day program, residential
22 facility or specialized service operated, **licensed, certified, accredited, in**
23 **possession of deemed status, or funded [or licensed]** by the department or
24 any mental health facility or mental health program in which people are admitted
25 on a voluntary basis or are civilly detained pursuant to chapter 632.

26 3. A person who has received a suspended imposition of sentence or a
27 suspended execution of sentence following a plea of guilty to any of the
28 disqualifying crimes listed in subsection 1 or 2 of this section shall remain
29 disqualified.

30 4. Any person disqualified pursuant to the provisions of subsection 1 or
31 2 of this section may seek an exception to the disqualification from the director
32 of the department or the director's designee. The request shall be written and
33 may not be made more than once every [twelve] **six** months. The request may
34 be granted by the director or designee if in the judgment of the director or
35 designee a clear showing has been made by written submission only, that the
36 person will not commit any additional acts for which the person had originally
37 been disqualified for or any other acts that would be harmful to a patient,
38 resident or client of a facility, program or service. The director or designee may
39 grant an exception subject to any conditions deemed appropriate and failure to
40 comply with such terms may result in the person again being disqualified. **Any**
41 **person placed on the disqualification registry prior to August 28, 2012,**
42 **may be removed from the registry by the director or designee if in the**
43 **judgment of the director or designee a clear showing has been made,**
44 **by written submission only, that the person will not commit any**
45 **additional acts for which the person had originally been disqualified**
46 **for or any other acts that would be harmful to a patient, resident, or**
47 **client of a facility, program, or service.** Decisions by the director or
48 designee pursuant to the provisions of this subsection shall not be subject to
49 appeal. The right to request an exception pursuant to this subsection shall not
50 apply to persons who are disqualified due to being listed on the department of
51 social services or department of health and senior services employee
52 disqualification list pursuant to section 660.315, nor to persons disqualified from
53 employment due to any crime pursuant to the provisions of chapter 566 or section
54 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070.

55 5. An applicant for a [direct care] position in any public or private facility,
56 day program, residential facility, or specialized service operated, **licensed,**
57 **certified, accredited, in possession of deemed status, or funded[, or**

58 licensed] by the department or any mental health facility or mental health
59 program in which people are admitted on a voluntary basis or are civilly detained
60 pursuant to chapter 632 shall:

61 (1) Sign a consent form as required by section 43.540 to provide written
62 consent for a criminal record review;

63 (2) Disclose the applicant's criminal history. For the purposes of this
64 subdivision "criminal history" includes any suspended imposition of sentence, any
65 suspended execution of sentence, or any period of probation or parole; and

66 (3) Disclose if the applicant is listed on the employee disqualification list
67 as provided in section 660.315, or the department of mental health
68 disqualification registry as provided for in this section.

69 6. Any person who has received a good cause waiver issued by the
70 [division of] **department of health and senior services** or its predecessor under
71 subsection 9 of section 660.317 shall not require an additional exception under
72 this section in order to be employed in a long-term care facility licensed under
73 chapter 198.

74 7. Any public or private residential facility, day program, or specialized
75 service **operated**, licensed, certified, **accredited, in possession of deemed**
76 **status**, or funded by the department **or any mental health facility or mental**
77 **health program in which people are admitted on a voluntary basis or**
78 **are civilly detained pursuant to chapter 632** shall, not later than two
79 working days after hiring any person for a full-time, part-time, or temporary
80 position that will have contact with clients, residents, or patients:

81 (1) Request a criminal background check as provided in section 43.540;

82 (2) Make an inquiry to the department of social services and department
83 of health and senior services to determine whether the person is listed on the
84 employee disqualification list as provided in section 660.315; and

85 (3) Make an inquiry to the department of mental health to determine
86 whether the person is listed on the disqualification registry as provided in this
87 section.

88 8. An applicant who knowingly fails to disclose his or her criminal history
89 as required in subsection 5 of this section is guilty of a class A misdemeanor. A
90 provider is guilty of a class A misdemeanor if the provider hires a person to hold
91 a direct-care position knowing that such person has been disqualified pursuant
92 to the provisions of subsection [1 or] 2 of this section. **A provider is guilty of**
93 **a class A misdemeanor if the provider hires a person to hold any**
94 **position knowing that such person has been disqualified pursuant to**
95 **the provisions of subsection 1 of this section.**

96 9. Any public or private residential facility, day program, or
97 specialized service operated, licensed, certified, accredited, in
98 possession of deemed status or funded by the department or any mental
99 health facility or mental health program in which people are admitted
100 on a voluntary basis or are civilly detained pursuant to chapter 632
101 that declines to employ or discharges a person who is disqualified
102 pursuant to the provisions of subsection 1 or 2 of this section shall be
103 immune from suit by that person or anyone else acting for or in behalf
104 of that person for the failure to employ or for the discharge of the
105 person due to disqualification.

106 10. Any employer who is required to discharge an employee
107 because the employee was placed on a disqualification registry
108 maintained by the department of mental health after the date of hire
109 shall not be charged for unemployment insurance benefits based on
110 wages paid to the employee for work prior to the date of discharge
111 pursuant to section 288.100.

112 11. The department [may] shall maintain a disqualification registry and
113 place on the registry the names of any persons who have been finally determined
114 by the department to be disqualified [pursuant to this section, or who have had]
115 **based upon** administrative substantiations made against them for abuse or
116 neglect pursuant to department rule **or regulation**. Such list shall reflect that
117 the person is barred from holding any position in any public or private facility
118 [or], day program, **residential facility, or specialized service** operated,
119 **licensed, certified, accredited, in possession of deemed status, or funded**
120 [or licensed] by the department, or any mental health facility or mental health
121 program in which persons are admitted on a voluntary basis or are civilly
122 detained pursuant to chapter 632. **The length of time the person's name**
123 **shall appear on the disqualification registry shall be determined by the**
124 **director or the director's designee, based upon the criteria contained**
125 **in subsection 13 of this section.**

126 12. Persons notified that their name will be placed on the
127 disqualification registry may appeal such determination pursuant to
128 department rule or regulation. If the person appeals, the hearing
129 tribunal shall not modify the length of time the person's name shall
130 appear on the disqualification registry if the hearing tribunal upholds
131 all of the administrative substantiations made by the director or the
132 director's designee. If the hearing tribunal overturns part of the
133 administrative substantiations made by the director or the director's

134 designee, the hearing tribunal may consider modifying the length of
135 time the person's name shall appear on the disqualification registry
136 based upon testimony and evidence received during the hearing.

137 13. The length of time the person's name shall appear on the
138 disqualification registry shall be determined by the director or the
139 director's designee based upon the following:

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

142 (2) The degree of actual or potential injury or harm to the
143 patient, resident, or client;

144 (3) The degree of actual or potential danger to the health, safety,
145 or welfare of the patient, resident, or client;

146 (3) The degree of misappropriation or conversion of patient,
147 resident, or client funds or property;

148 (4) Whether the person has previously been listed on the
149 department's disqualification registry;

150 (5) Any mitigating circumstances; and

151 (6) Any aggravating circumstances.

152 14. The department shall provide the disqualification registry
153 maintained pursuant to this section to other state and federal agencies
154 upon request. The department may provide the disqualification
155 registry maintained pursuant to this section to any public or private
156 facility, day program, residential facility, or specialized service
157 operated, licensed, certified, accredited, in possession of deemed status,
158 or funded by the department or to any mental health facility or mental
159 health program in which people are admitted on a voluntary or
160 involuntary basis or are civilly detained pursuant to chapter 632. The
161 department may also provide the disqualification registry to a
162 recognized school of nursing, medicine, or other health profession for
163 the purpose of determining whether students scheduled to participate
164 in clinical rotations are included in the employee disqualification
165 registry.

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