

SECOND REGULAR SESSION

SENATE BILL NO. 854

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time February 28, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5977S.011

AN ACT

To repeal section 660.315, RSMo, and to enact in lieu thereof one new section relating to the employment disqualification list for home care employees.

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Section A. Section 660.315, RSMo, is repealed and one new section
2 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
2 place a person's name on the employee disqualification list, that person shall be
3 notified in writing mailed to his or her last known address that:

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

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

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

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

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

17 3. If the person so notified wishes to challenge the allegation, such person
18 may file an application for a hearing with the department. The department shall
19 grant the application within thirty days after receipt by the department and set

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

20 the matter for hearing, or the department shall notify the applicant that, after
21 review, the allegation has been held to be unfounded and the applicant's name
22 will not be listed.

23 4. If a person's name is included on the employee disqualification list
24 without the department providing notice as required under subsection 1 of this
25 section, such person may file a request with the department for removal of the
26 name or for a hearing. Within thirty days after receipt of the request, the
27 department shall either remove the name from the list or grant a hearing and set
28 a date therefor.

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

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

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

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

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

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

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

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

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

65 (5) Any mitigating circumstances;

66 (6) Any aggravating circumstances; and

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

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

77 11. The department shall provide the list maintained pursuant to this
78 section to other state departments upon request and to any person, corporation,
79 organization, or association who:

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

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

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

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

86 (5) Is an entity licensed under chapter 197; or

87 (6) Is a recognized school of nursing, medicine, or other health profession
88 for the purpose of determining whether students scheduled to participate in
89 clinical rotations with entities described in subdivision (1), (2), or (5) of this
90 subsection are included in the employee disqualification list. The department
91 shall inform any person listed above who inquires of the department whether or

92 not a particular name is on the list. The department may require that the
93 request be made in writing.

94 12. No person, corporation, organization, or association who received the
95 employee disqualification list under subdivisions (1) to (5) of subsection 11 of this
96 section shall knowingly employ any person who is on the employee
97 disqualification list. Any person, corporation, organization, or association who
98 received the employee disqualification list under subdivisions (1) to (5) of
99 subsection 11 of this section, or any person responsible for providing health care
100 service, who declines to employ or terminates a person whose name is listed in
101 this section shall be immune from suit by that person or anyone else acting for
102 or in behalf of that person for the failure to employ or for the termination of the
103 person whose name is listed on the employee disqualification list.

104 13. Any employer [who is] required to [discharge an employee because the
105 employee was placed on a disqualification list maintained by the department of
106 health and senior services after the date of hire] **deny employment to an
107 applicant or discharge an employee, provisional or otherwise, as a
108 result of information obtained through any portion of the background
109 screening and employment eligibility determination process under
110 section 210.903, or subsequent, periodic screenings, shall not be liable
111 in any action brought by the applicant or employee, provisional or
112 otherwise, and** shall not be charged for unemployment insurance benefits based
113 on wages paid to the employee for work prior to the date of discharge, pursuant
114 to section 288.100. **Further, an employer shall not be charged for
115 unemployment insurance benefits based on wages paid to the employee
116 or an employer making payments in lieu of contributions for work prior
117 to the date of discharge, pursuant to section 288.100, if the employer
118 terminated the employee because the employee:**

119 (1) **Has been found guilty of, pled guilty or nolo contendere in
120 this state or any other state or has been found guilty of a crime as
121 listed in subsection 6 of section 660.317;**

122 (2) **Was placed on the employee disqualification list under this
123 section, after the date of hire;**

124 (3) **Was placed on the employee disqualification registry
125 maintained by the department of mental health, after the date of hire;**

126 (4) **Has a disqualifying finding under this section, section
127 660.317, or is on any of the background check lists in the family care**

128 **safety registry under sections 210.900 to 210.936; or**

129 **(5) Was denied a good cause waiver as provided for in subsection**
130 **10 of section 660.317.**

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

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Bill

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