

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 229
97TH GENERAL ASSEMBLY

Reported from the Committee on Veterans' Affairs and Health, March 14, 2013, with recommendation that the Senate Committee Substitute do pass.

1110S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof one new section relating to the mental health 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Section A. Section 630.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 630.170, to read as follows: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 disqualification registry pursuant to this section, who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, or who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to any crime pursuant to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded 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.

2. A person who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to **any felony offense as defined in chapter 195;** any felony offense against persons as defined in chapter 565; any felony [sexual] offense as defined in chapter 566; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, **568.175**, 569.020, 569.025, 569.030, 569.035, 569.040, 569.050, 569.070, [or] 569.160, **570.030, 570.040, 570.090, 570.145, 570.223,**

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

19 **575.230, or 576.080**, or of an equivalent felony offense **in another state, or an**
20 **equivalent federal felony offense, or an equivalent offense under the**
21 **Uniform Code of Military Justice**, or who has been [convicted] **found guilty**
22 of or [pled] **pleaded** guilty or nolo contendere to any violation of subsection 3 of
23 section 198.070, **or who has been found guilty of or pleaded guilty or nolo**
24 **contendere to a violation of section 577.010 or section 577.012 and who**
25 **is alleged and found by the court to be an aggravated or chronic**
26 **offender under section 577.023**, or has been [convicted] **found guilty** of or
27 [pled] **pleaded** guilty or nolo contendere to any offense requiring registration
28 under section 589.400, shall be disqualified from holding any direct-care position
29 in any public or private facility, day program, residential facility or specialized
30 service operated, licensed, certified, accredited, in possession of deemed status,
31 or funded by the department or any mental health facility or mental health
32 program in which people are admitted on a voluntary basis or are civilly detained
33 pursuant to chapter 632.

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

38 4. Any person disqualified pursuant to the provisions of subsection 1 or
39 2 of this section may seek an exception to the disqualification from the director
40 of the department or the director's designee, **especially if the person is in**
41 **recovery and the disqualifying felony offense was alcohol or drug**
42 **related**. The request shall be written and may not be made more than once
43 every six months. The request may be granted by the director or designee if in
44 the judgment of the director or designee a clear showing has been made by
45 written submission only, that the person will not commit any additional acts for
46 which the person had originally been disqualified for or any other acts that would
47 be harmful to a patient, resident or client of a facility, program or service. The
48 director or designee may grant an exception subject to any conditions deemed
49 appropriate and failure to comply with such terms may result in the person again
50 being disqualified. Any person placed on the disqualification registry prior to
51 August 28, 2012, may be removed from the registry by the director or designee
52 if in the judgment of the director or designee a clear showing has been made, by
53 written submission only, that the person will not commit any additional acts for
54 which the person had originally been disqualified for or any other acts that would

55 be harmful to a patient, resident, or client of a facility, program, or
56 service. Decisions by the director or designee pursuant to the provisions of this
57 subsection shall not be subject to appeal. The right to request an exception
58 pursuant to this subsection shall not apply to persons who are disqualified due
59 to being listed on the department of social services or department of health and
60 senior services employee disqualification list pursuant to section 660.315, nor to
61 persons disqualified from employment due to any crime pursuant to the
62 provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025,
63 or 569.070.

64 5. An applicant for a position in any public or private facility, day
65 program, residential facility, or specialized service operated, licensed, certified,
66 accredited, in possession of deemed status, or funded by the department or any
67 mental health facility or mental health program in which people are admitted on
68 a voluntary basis or are civilly detained pursuant to chapter 632 shall:

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

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

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

77 6. Any person who has received a good cause waiver issued by the
78 department of health and senior services or its predecessor under subsection 9 of
79 section 660.317 shall not require an additional exception under this section in
80 order to be employed in a long-term care facility licensed under chapter 198.

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

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

89 (2) Make an inquiry to the department of social services and department
90 of health and senior services to determine whether the person is listed on the

91 employee disqualification list as provided in section 660.315; and

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

95 8. An applicant who knowingly fails to disclose his or her criminal history
96 as required in subsection 5 of this section is guilty of a class A misdemeanor. A
97 provider is guilty of a class A misdemeanor if the provider hires a person to hold
98 a direct-care position knowing that such person has been disqualified pursuant
99 to the provisions of subsection 2 of this section. A provider is guilty of a class A
100 misdemeanor if the provider hires a person to hold any position knowing that
101 such person has been disqualified pursuant to the provisions of subsection 1 of
102 this section.

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

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

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

127 shall appear on the disqualification registry shall be determined by the director
128 or the director's designee, based upon the criteria contained in subsection 13 of
129 this section.

130 12. Persons notified that their name will be placed on the disqualification
131 registry may appeal such determination pursuant to department rule or
132 regulation. If the person appeals, the hearing tribunal shall not modify the
133 length of time the person's name shall appear on the disqualification registry if
134 the hearing tribunal upholds all of the administrative substantiations made by
135 the director or the director's designee. If the hearing tribunal overturns part of
136 the administrative substantiations made by the director or the director's designee,
137 the hearing tribunal may consider modifying the length of time the person's name
138 shall appear on the disqualification registry based upon testimony and evidence
139 received during the hearing.

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

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

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

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

149 (4) The degree of misappropriation or conversion of patient, resident, or
150 client funds or property;

151 (5) Whether the person has previously been listed on the department's
152 disqualification registry;

153 (6) Any mitigating circumstances; and

154 (7) Any aggravating circumstances.

155 14. The department shall provide the disqualification registry maintained
156 pursuant to this section to other state and federal agencies upon request. The
157 department may provide the disqualification registry maintained pursuant to this
158 section to any public or private facility, day program, residential facility, or
159 specialized service operated, licensed, certified, accredited, in possession of
160 deemed status, or funded by the department or to any mental health facility or
161 mental health program in which people are admitted on a voluntary or
162 involuntary basis or are civilly detained pursuant to chapter 632. The

163 department may also provide the disqualification registry to a recognized school
164 of nursing, medicine, or other health profession for the purpose of determining
165 whether students scheduled to participate in clinical rotations are included in the
166 employee disqualification registry.

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