

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 363

100TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, Infrastructure and Public Safety, March 14, 2019, with recommendation that the Senate Committee Substitute do pass.

1462S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 43.540, RSMo, and to enact in lieu thereof three new sections relating to background checks, with a penalty provision and an emergency clause.

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

Section A. Section 43.540, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 43.539, 43.540, and 43.548, to read as follows:

43.539. 1. As used in this section, the following terms shall mean:

(1) "Applicant", a person who:

(a) Is actively employed by or seeks employment with a qualified entity;

(b) Is actively licensed or seeks licensure with a qualified entity;

(c) Actively volunteers or seeks to volunteer with a qualified entity;

(d) Is actively contracted with or seeks to contract with a qualified entity; or

(e) Owns or operates a qualified entity;

(2) "Care", the provision of care, treatment, education, training, instruction, supervision, or recreation to youth, elderly, or disabled;

(3) "Missouri criminal record review", a review of criminal history records and sex offender registration records pursuant to sections 589.400 to 589.425 maintained by the Missouri state highway patrol in the Missouri criminal records repository;

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

17 (4) "Missouri Rap Back program", shall include any type of
18 automatic notification made by the Missouri state highway patrol to a
19 qualified entity indicating that an applicant who is employed, licensed,
20 or otherwise under the purview of that entity has been arrested for a
21 reported criminal offense in Missouri as required under section 43.506;

22 (5) "National criminal record review", a review of the criminal
23 history records maintained by the Federal Bureau of Investigation;

24 (6) "National Rap Back program", shall include any type of
25 automatic notification made by the Federal Bureau of Investigation
26 through the Missouri state highway patrol to a qualified entity
27 indicating that an applicant who is employed, licensed, or otherwise
28 under the purview of that entity has been arrested for a reported
29 criminal offense outside the state of Missouri and the fingerprints for
30 that arrest were forwarded to the Federal Bureau of Investigation by
31 the arresting agency;

32 (7) "Patient or resident", a person who by reason of age, illness,
33 disease or physical or mental infirmity receives or requires care or
34 services furnished by an applicant, as defined in this section, or who
35 resides or boards in, or is otherwise kept, cared for, treated or
36 accommodated in a facility as defined in section 198.006, for a period
37 exceeding twenty-four consecutive hours;

38 (8) "Qualified entity", an entity that is a person, business, or
39 organization that provides care, care placement, or educational
40 services for children, the elderly, or persons with disabilities as
41 patients or residents, including a business or organization that licenses
42 or certifies others to provide care or care placement services;

43 (9) "Youth services agency", any agency, school, or association
44 which provides programs, care, or treatment for or which exercises
45 supervision over minors.

46 2. The central repository shall have the authority to submit
47 applicant fingerprints to the National Rap Back program to be retained
48 for the purpose of being searched against future submissions to the
49 National Rap Back program, including latent fingerprint
50 searches. Qualified entities may conduct Missouri and national
51 criminal record reviews on applicants and participate in Missouri and
52 National Rap Back programs for the purpose of determining suitability
53 or fitness for a permit, license, or employment, and shall abide by the

54 following requirements:

55 (1) The qualified entity shall register with the Missouri state
56 highway patrol prior to submitting a request for screening under this
57 section. As part of such registration, the qualified entity shall indicate
58 if it chooses to enroll their applicants in the Missouri and National Rap
59 Back programs;

60 (2) Qualified entities shall notify applicants subject to a criminal
61 record review under this section that the applicant's fingerprints shall
62 be retained by the state central repository and the Federal Bureau of
63 Investigation and shall be searched against other fingerprints on file,
64 including latent fingerprints;

65 (3) Qualified entities shall notify applicants subject to
66 enrollment in the National Rap Back program that the applicant's
67 fingerprints, while retained, may continue to be compared against
68 other fingerprints submitted or retained by the Federal Bureau of
69 Investigation, including latent fingerprints;

70 (4) The criminal record review and Rap Back process described
71 in this section shall be voluntary and conform to the requirements
72 established in the National Child Protection Act of 1993, as amended,
73 and other applicable state or federal law. As a part of the registration,
74 the qualified entity shall agree to comply with state and federal law
75 and shall indicate so by signing an agreement approved by the Missouri
76 state highway patrol. The Missouri state highway patrol may
77 periodically audit qualified entities to ensure compliance with federal
78 law and this section;

79 (5) A qualified entity shall submit to the Missouri state highway
80 patrol a request for screening on applicants covered under this section
81 using a completed fingerprint card;

82 (6) Each request shall be accompanied by a reasonable fee, as
83 provided in section 43.530, plus the amount required, if any, by the
84 Federal Bureau of Investigation for the national criminal record review
85 and enrollment in the National Rap Back program in compliance with
86 the National Child Protection Act of 1993, as amended, and other
87 applicant state or federal laws;

88 (7) The Missouri state highway patrol shall provide, directly to
89 the qualified entity, the applicant's state criminal history records that
90 are not exempt from disclosure under chapter 610 or are otherwise

91 **confidential under law;**

92 **(8) The national criminal history data shall be available to**
93 **qualified entities to use only for the purpose of screening applicants as**
94 **described under this section. The Missouri state highway patrol shall**
95 **provide the applicant's national criminal history record information**
96 **directly to the qualified entity;**

97 **(9) The determination whether the criminal history record shows**
98 **that the applicant has been convicted of, or has a pending charge, for**
99 **any crime that bears upon the fitness of the applicant to have**
100 **responsibility for the safety and well-being of children, the elderly, or**
101 **disabled persons shall be made solely by the qualified entity. This**
102 **section shall not require the Missouri state highway patrol to make**
103 **such a determination on behalf of any qualified entity;**

104 **(10) The qualified entity shall notify the applicant, in writing, of**
105 **his or her right to obtain a copy of any criminal record review,**
106 **including the criminal history records, if any, contained in the report,**
107 **and of the applicant's right to challenge the accuracy and completeness**
108 **of any information contained in any such report and to obtain a**
109 **determination as to the validity of such challenge before a final**
110 **determination regarding the applicant is made by the qualified entity**
111 **reviewing the criminal history information. A qualified entity that is**
112 **required by law to apply screening criteria, including any right to**
113 **contest or request an exemption from disqualification, shall apply such**
114 **screening criteria to the state and national criminal history record**
115 **information received from the Missouri state highway patrol for those**
116 **applicants subject to the required screening; and**

117 **(11) Failure to obtain the information authorized under this**
118 **section with respect to an applicant shall not be used as evidence in**
119 **any negligence action against a qualified entity. The state, any**
120 **political subdivision of the state, or any agency, officer, or employee of**
121 **the state or a political subdivision shall not be liable for damages for**
122 **providing the information requested under this section.**

123 **3. The criminal record review shall include the submission of**
124 **fingerprints to:**

125 **(1) The Missouri state highway patrol, who shall conduct a**
126 **Missouri criminal record review, including closed record information**
127 **under section 610.120; and**

128 **(2) The Missouri state highway patrol shall also forward a copy**
129 **of the applicant's fingerprints to the Federal Bureau of Investigation**
130 **for a national criminal record review.**

131 **4. The applicant subject to a criminal record review shall**
132 **provide the following information to the qualified entity:**

133 **(1) Consent to obtain the applicant's fingerprints, conduct the**
134 **criminal record review, and participate in the Missouri and National**
135 **Rap Back programs;**

136 **(2) Consent to obtain the identifying information required to**
137 **conduct the criminal record review, which may include, but not be**
138 **limited to:**

139 **(a) Name;**

140 **(b) Date of birth;**

141 **(c) Height;**

142 **(d) Weight;**

143 **(e) Eye color;**

144 **(f) Hair color;**

145 **(g) Gender;**

146 **(h) Race;**

147 **(i) Place of birth;**

148 **(j) Social Security number; and**

149 **(k) The applicant's photo.**

150 **5. Any information received by an authorized state agency or a**
151 **qualified entity pursuant to the provisions of this section shall be used**
152 **solely for internal purposes in determining the suitability of an**
153 **applicant. The dissemination of criminal history information from the**
154 **Federal Bureau of Investigation beyond the authorized state agency or**
155 **related governmental entity is prohibited. All criminal record check**
156 **information shall be confidential and any person who discloses the**
157 **information beyond the scope allowed is guilty of a class A**
158 **misdemeanor.**

159 **6. A qualified entity enrolled in either the Missouri or National**
160 **Rap Back programs shall be notified by the Missouri state highway**
161 **patrol that a new arrest has been reported on an applicant who is**
162 **employed, licensed, or otherwise under the purview of the qualified**
163 **entity. Upon receiving the Rap Back notification, if the qualified entity**
164 **deems that the applicant is still serving in an active capacity, the entity**

165 may request and receive the individual's updated criminal history
166 record. This process shall only occur if:

167 (1) The agency has abided by all procedures and rules
168 promulgated by the Missouri state highway patrol and Federal Bureau
169 of Investigation regarding the Missouri and National Rap Back
170 programs;

171 (2) The individual upon whom the Rap Back notification is being
172 made has previously had a Missouri and national criminal record
173 review completed for the qualified entity under this section within the
174 previous six years; and

175 (3) The individual upon whom the Rap Back notification is being
176 made is a current employee, licensee, or otherwise still actively under
177 the purview of the qualified entity.

178 7. The highway patrol shall make available or approve the
179 necessary forms, procedures, and agreements necessary to implement
180 the provisions of this section.

43.540. 1. As used in this section, the following terms mean:

2 (1) "Applicant", a person who:

3 (a) Is actively employed by or seeks employment with a qualified entity;

4 (b) Is actively licensed or seeks licensure with a qualified entity;

5 (c) Actively volunteers or seeks to volunteer with a qualified entity; or

6 (d) Is actively contracted with or seeks to contract with a qualified entity;

7 [or

8 (e) Owns or operates a qualified entity;

9 (2) "Care", the provision of care, treatment, education, training,
10 instruction, supervision, or recreation;

11 (3) (2) "Missouri criminal record review", a review of criminal history
12 records and sex offender registration records pursuant to sections 589.400 to
13 589.425 maintained by the Missouri state highway patrol in the Missouri criminal
14 records repository;

15 [(4)] (3) "Missouri Rap Back program", shall include any type of
16 automatic notification made by the Missouri state highway patrol to a qualified
17 entity indicating that an applicant who is employed, licensed, or otherwise under
18 the purview of that entity has been arrested for a reported criminal offense in
19 Missouri as required under section 43.506;

20 [(5)] (4) "National criminal record review", a review of the criminal

21 history records maintained by the Federal Bureau of Investigation;

22 [(6)] (5) "National Rap Back program", shall include any type of
23 automatic notification made by the Federal Bureau of Investigation through the
24 Missouri state highway patrol to a qualified entity indicating that an applicant
25 who is employed, licensed, or otherwise under the purview of that entity has been
26 arrested for a reported criminal offense outside the state of Missouri and the
27 fingerprints for that arrest were forwarded to the Federal Bureau of Investigation
28 by the arresting agency;

29 [(7) "Patient or resident", a person who by reason of age, illness, disease
30 or physical or mental infirmity receives or requires care or services furnished by
31 an applicant, as defined in this section, or who resides or boards in, or is
32 otherwise kept, cared for, treated or accommodated in a facility as defined in
33 section 198.006, for a period exceeding twenty-four consecutive hours;

34 (8)] (6) "Qualified entity", an entity that is:

35 (a) [A person, business, or organization, whether public or private, for
36 profit, not for profit, or voluntary, that provides care, care placement, or
37 educational services for children, the elderly, or persons with disabilities as
38 patients or residents, including a business or organization that licenses or
39 certifies others to provide care or care placement services;

40 (b)] An office or division of state, county, or municipal government,
41 including a political subdivision or a board or commission designated by statute
42 or approved local ordinance, to issue or renew a license, permit, certification, or
43 registration of authority;

44 [(c)] (b) An office or division of state, county, or municipal government,
45 including a political subdivision or a board or commission designated by statute
46 or approved local ordinance, to make fitness determinations on applications for
47 state, county, or municipal government employment; **or**

48 [(d) A criminal justice agency, including law enforcement agencies that
49 screen persons seeking issuance or renewal of a license, permit, certificate, or
50 registration to purchase or possess a firearm; or

51 (e)] (c) Any entity that is authorized to obtain criminal history record
52 information under 28 CFR 20.33[;

53 (9) "Youth services agency", any public or private agency, school, or
54 association which provides programs, care or treatment for or which exercises
55 supervision over minors].

56 2. The central repository shall have the authority to submit applicant

57 fingerprints to the National Rap Back program to be retained for the purpose of
58 being searched against future submissions to the National Rap Back program,
59 including latent fingerprint searches. Qualified entities may conduct Missouri
60 and national criminal record reviews on applicants and participate in Missouri
61 and National Rap Back programs for the purpose of determining suitability or
62 fitness for a permit, license, or employment, and shall abide by the following
63 requirements:

64 (1) The qualified entity shall register with the Missouri state highway
65 patrol prior to submitting a request for screening under this section. As part of
66 such registration, the qualified entity shall indicate if it chooses to enroll their
67 applicants in the Missouri and National Rap Back programs;

68 (2) Qualified entities shall notify applicants subject to a criminal record
69 review under this section that the applicant's fingerprints shall be retained by
70 the state central repository and the Federal Bureau of Investigation and shall be
71 searched against other fingerprints on file, including latent fingerprints;

72 (3) Qualified entities shall notify applicants subject to enrollment in the
73 National Rap Back program that the applicant's fingerprints, while retained, may
74 continue to be compared against other fingerprints submitted or retained by the
75 Federal Bureau of Investigation, including latent fingerprints;

76 (4) The criminal record review and Rap Back process described in this
77 section shall be voluntary and conform to the requirements established in [the
78 National Child Protection Act of 1993, as amended,] **P.L. 92-544** and other
79 applicable state or federal law. As a part of the registration, the qualified entity
80 shall agree to comply with state and federal law and shall indicate so by signing
81 an agreement approved by the Missouri state highway patrol. The Missouri state
82 highway patrol may periodically audit qualified entities to ensure compliance
83 with federal law and this section;

84 (5) A qualified entity shall submit to the Missouri state highway patrol
85 a request for screening on applicants covered under this section using a
86 completed fingerprint card;

87 (6) Each request shall be accompanied by a reasonable fee, as provided in
88 section 43.530, plus the amount required, if any, by the Federal Bureau of
89 Investigation for the national criminal record review and enrollment in the
90 National Rap Back program in compliance with [the National Child Protection
91 Act of 1993, as amended, and other applicant] **applicable** state or federal laws;

92 (7) The Missouri state highway patrol shall provide, directly to the

93 qualified entity, the applicant's state criminal history records that are not exempt
94 from disclosure under chapter 610 or are otherwise confidential under law;

95 (8) The national criminal history data shall be available to qualified
96 entities to use only for the purpose of screening applicants as described under
97 this section. The Missouri state highway patrol shall provide the applicant's
98 national criminal history record information directly to the qualified entity;

99 (9) [The determination whether the criminal history record shows that the
100 applicant has been convicted of, or has a pending charge, for any crime that bears
101 upon the fitness of the applicant to have responsibility for the safety and
102 well-being of children, the elderly, or disabled persons shall be made solely by the
103 qualified entity.] This section shall not require the Missouri state highway patrol
104 to make [such a] **an eligibility** determination on behalf of any qualified entity;

105 (10) The qualified entity shall notify the applicant, in writing, of his or
106 her right to obtain a copy of any criminal record review, including the criminal
107 history records, if any, contained in the report, and of the applicant's right to
108 challenge the accuracy and completeness of any information contained in any
109 such report and to obtain a determination as to the validity of such challenge
110 before a final determination regarding the applicant is made by the qualified
111 entity reviewing the criminal history information. A qualified entity that is
112 required by law to apply screening criteria, including any right to contest or
113 request an exemption from disqualification, shall apply such screening criteria
114 to the state and national criminal history record information received from the
115 Missouri state highway patrol for those applicants subject to the required
116 screening; and

117 (11) Failure to obtain the information authorized under this section with
118 respect to an applicant shall not be used as evidence in any negligence action
119 against a qualified entity. The state, any political subdivision of the state, or any
120 agency, officer, or employee of the state or a political subdivision shall not be
121 liable for damages for providing the information requested under this section.

122 3. The criminal record review shall include the submission of fingerprints
123 to:

124 (1) The Missouri state highway patrol, who shall conduct a Missouri
125 criminal record review, including closed record information under section 610.120;
126 and

127 (2) The Missouri state highway patrol shall also forward a copy of the
128 applicant's fingerprints to the Federal Bureau of Investigation for a national

129 criminal record review.

130 4. The applicant subject to a criminal record review shall provide the
131 following information to the qualified entity:

132 (1) Consent to obtain the applicant's fingerprints, conduct the criminal
133 record review, and participate in the Missouri and National Rap Back programs;

134 (2) Consent to obtain the identifying information required to conduct the
135 criminal record review, which may include, but not be limited to:

136 (a) Name;

137 (b) Date of birth;

138 (c) Height;

139 (d) Weight;

140 (e) Eye color;

141 (f) Hair color;

142 (g) Gender;

143 (h) Race;

144 (i) Place of birth;

145 (j) Social Security number; and

146 (k) The applicant's photo.

147 5. Any information received by an authorized state agency or a qualified
148 entity pursuant to the provisions of this section shall be used solely for internal
149 purposes in determining the suitability of an applicant. The dissemination of
150 criminal history information from the Federal Bureau of Investigation beyond the
151 authorized state agency or related governmental entity is prohibited. All criminal
152 record check information shall be confidential and any person who discloses the
153 information beyond the scope allowed is guilty of a class A misdemeanor.

154 6. A qualified entity enrolled in either the Missouri or National Rap Back
155 programs shall be notified by the Missouri state highway patrol that a new arrest
156 has been reported on an applicant who is employed, licensed, or otherwise under
157 the purview of the qualified entity. Upon receiving the Rap Back notification, if
158 the qualified entity deems that the applicant is still serving in an active capacity,
159 the entity may request and receive the individual's updated criminal history
160 record. This process shall only occur if:

161 (1) The agency has abided by all procedures and rules promulgated by the
162 Missouri state highway patrol and Federal Bureau of Investigation regarding the
163 Missouri and National Rap Back programs;

164 (2) The individual upon whom the Rap Back notification is being made

165 has previously had a Missouri and national criminal record review completed for
166 the qualified entity under this section within the previous six years; and

167 (3) The individual upon whom the Rap Back notification is being made is
168 a current employee, licensee, or otherwise still actively under the purview of the
169 qualified entity.

170 7. The highway patrol shall make available or approve the necessary
171 forms, procedures, and agreements necessary to implement the provisions of this
172 section.

**43.548. 1. Missouri circuit courts and the department of social
2 services may require the fingerprinting of applicants for the purpose
3 of adoptions, guardians, conservators, advocates and personal
4 representatives over minors, incapacitated, elderly or disabled persons,
5 including supervision and care over minors or elderly persons or
6 persons with disabilities, for the purpose of positive identification and
7 receiving criminal history information when determining an applicant's
8 ability or fitness to serve in such capacity.**

9 **2. Fingerprint based criminal history record checks submitted
10 under subsection 1 of this section shall be forwarded to the highway
11 patrol to be used to search the state's criminal history repository and
12 the fingerprints shall be forwarded to the Federal Bureau of
13 Investigation for a national criminal background check pursuant to
14 section 43.540 and pay all applicable fees pursuant to section
15 43.530. Notwithstanding the provisions of section 610.120 to the
16 contrary, all records related to any criminal history information shall
17 be accessible and available to the circuit court or state agency making
18 the request.**

Section B. Because of the urgent need to protect the safety of the citizens
2 of this state, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and
5 section A of this act shall be in full force and effect upon its passage and
6 approval.

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