

FIRST REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 363**  
100TH GENERAL ASSEMBLY

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

Senate Committee Substitute for Senate Bill No. 363, adopted April 10, 2019.

Taken up for Perfection April 10, 2019. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

1462S.02P

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**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.

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Section A. Section 43.540, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 43.539, 43.540, and 43.548, to read as follows: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

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

15 sections 589.400 to 589.425 maintained by the Missouri state highway  
16 patrol in the Missouri criminal records repository;

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.