

FIRST REGULAR SESSION

# HOUSE BILL NO. 931

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SANDERS BROOKS.

Read 1<sup>st</sup> time March 7, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2149L.011

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### AN ACT

To repeal sections 198.070, 198.090, 210.903, 210.909, 630.170, 660.300, 660.305, 660.315, 660.317 and 660.320, RSMo 2000, and to enact in lieu thereof eleven new sections relating to centralized state employee disqualification list.

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

Section A. Sections 198.070, 198.090, 210.903, 210.909, 630.170, 660.300, 660.305, 660.315, 660.317 and 660.320, RSMo 2000, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 198.070, 198.090, 210.903, 210.909, 285.030, 630.170, 660.300, 660.305, 660.315, 660.317 and 660.320, to read as follows:

- 198.070. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner, peace officer, pharmacist, physical therapist, facility administrator, employee in a facility, or employee of the department of social services or of the department of mental health, coroner, dentist, hospital and clinic personnel engaged in examination, other health practitioners, mental health professional, adult day care worker, probation or parole officer, law enforcement official or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department.
2. The report shall contain the name and address of the facility, the name of the resident, information regarding the nature of the abuse or neglect, the name of the complainant, and any other information which might be helpful in an investigation.
3. Any person required in subsection 1 of this section to report or cause a report to be

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

14 made to the department who knowingly fails to make a report within a reasonable time after the  
15 act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

16 4. In addition to those persons required to report pursuant to subsection 1 of this section,  
17 any other person having reasonable cause to believe that a resident has been abused or neglected  
18 may report such information to the department.

19 5. Upon receipt of a report, the department shall initiate an investigation within  
20 twenty-four hours and, as soon as possible during the course of the investigation, shall notify the  
21 resident's next of kin or responsible party of the report and the investigation and further notify  
22 them whether the report was substantiated or unsubstantiated. As provided in section 565.186,  
23 RSMo, substantiated reports of elder abuse shall be promptly reported by the department to the  
24 appropriate law enforcement agency and prosecutor.

25 6. If the investigation indicates possible abuse or neglect of a resident, the investigator  
26 shall refer the complaint together with the investigator's report to the department director or the  
27 director's designee for appropriate action. If, during the investigation or at its completion, the  
28 department has reasonable cause to believe that immediate removal is necessary to protect the  
29 resident from abuse or neglect, the department or the local prosecuting attorney may, or the  
30 attorney general upon request of the department shall, file a petition for temporary care and  
31 protection of the resident in a circuit court of competent jurisdiction. The circuit court in which  
32 the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the  
33 department authority for the temporary care and protection of the resident, for a period not to  
34 exceed thirty days.

35 7. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

36 8. Anyone who makes a report pursuant to this section or who testifies in any  
37 administrative or judicial proceeding arising from the report shall be immune from any civil or  
38 criminal liability for making such a report or for testifying except for liability for perjury, unless  
39 such person acted in bad faith or with malicious purpose. It is a crime pursuant to section  
40 565.186 and 565.188, RSMo, for any person to purposely file a false report of elder abuse or  
41 neglect.

42 9. Within five working days after a report required to be made pursuant to this section  
43 is received, the person making the report shall be notified in writing of its receipt and of the  
44 initiation of the investigation.

45 10. No person who directs or exercises any authority in a facility shall evict, harass,  
46 dismiss or retaliate against a resident or employee because such resident or employee or any  
47 member of such resident's or employee's family has made a report of any violation or suspected  
48 violation of laws, ordinances or regulations applying to the facility which the resident, the  
49 resident's family or an employee has reasonable cause to believe has been committed or has

50 occurred. Through the existing division of aging information and referral telephone contact line,  
51 residents, their families and employees of a facility shall be able to obtain information about their  
52 rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to  
53 a report being made pursuant to this section.

54 11. Any person who knowingly abuses or neglects a resident of a facility shall be guilty  
55 of a class D felony.

56 12. The [department] **state** shall maintain the employee disqualification list **pursuant**  
57 **to section 285.030, RSMo, and the department shall** place on the employee disqualification  
58 list the names of any persons who have been finally determined by the department pursuant to  
59 section 660.315, RSMo, to have recklessly, knowingly or purposely abused or neglected a  
60 resident while employed in any facility.

61 13. The timely self-reporting of incidents to the central registry by a facility shall  
62 continue to be investigated in accordance with department policy, and shall not be counted or  
63 reported by the department as a hot-line call but rather a self-reported incident. If the  
64 self-reported incident results in a regulatory violation, such incident shall be reported as a  
65 substantiated report.

198.090. 1. An operator may make available to any resident the service of holding in  
2 trust personal possessions and funds of the resident and shall, as authorized by the resident,  
3 expend the funds to meet the resident's personal needs. In providing this service the operator  
4 shall:

5 (1) At the time of admission, provide each resident or [his] **the resident's** next of kin  
6 or legal guardian with a written statement explaining the resident's rights regarding personal  
7 funds;

8 (2) Accept funds and personal possessions from or for a resident for safekeeping and  
9 management, only upon written authorization by the resident or by [his] **the resident's** designee,  
10 or guardian in the case of an adjudged incompetent;

11 (3) Deposit any personal funds received from or on behalf of a resident in an account  
12 separate from the facility's funds, except that an amount to be established by rule of the division  
13 of aging may be kept in a petty cash fund for the resident's personal needs;

14 (4) Keep a written account, available to a resident and [his] **the resident's** designee or  
15 guardian, maintained on a current basis for each resident, with written receipts, for all personal  
16 possessions and funds received by or deposited with the facility and for all disbursements made  
17 to or on behalf of the resident;

18 (5) Provide each resident or [his] **the resident's** designee or guardian with a quarterly  
19 accounting of all financial transactions made on behalf of the resident;

20 (6) Within five days of the discharge of a resident, provide the resident, or [his] **the**

21 **resident's** designee or guardian, with an up-to-date accounting of the resident's personal funds  
22 and return to the resident the balance of his **or her** funds and all his **or her** personal possessions;

23 (7) Upon the death of a resident who has been a recipient of aid, assistance, care,  
24 services, or who has had moneys expended on [his] **the resident's** behalf by the department of  
25 social services, provide the department a complete account of all the resident's personal funds  
26 within sixty days from the date of death. The total amount paid to the decedent or expended  
27 upon his **or her** behalf by the department shall be a debt due the state and recovered from the  
28 available funds upon the department's claim on such funds. The department shall make a claim  
29 on the funds within sixty days from the date of the accounting of the funds by the facility. The  
30 nursing facility shall pay the claim made by the department of social services from the resident's  
31 personal funds within sixty days. Where the name and address are reasonably ascertainable, the  
32 department of social services shall give notice of the debt due the state to the person whom the  
33 recipient had designated to receive the quarterly accounting of all financial transactions made  
34 under this section, or the resident's guardian or conservator or the person or persons listed in  
35 nursing home records as a responsible party or the fiduciary of the resident's estate. If any funds  
36 are available after the department's claim, the remaining provisions of this section shall apply to  
37 the balance, unless the funds belonged to a person other than the resident, in which case the  
38 funds shall be paid to that person;

39 (8) Upon the death of a resident who has not been a recipient of aid, assistance, care,  
40 services, or who has not had moneys expended on his **or her** behalf by the department of social  
41 services or the department has not made a claim on the funds, provide the fiduciary of resident's  
42 estate, at the fiduciary's request, a complete account of all the resident's personal funds and  
43 possessions and deliver to the fiduciary all possessions of the resident and the balance of the  
44 resident's funds. If, after one year from the date of death, no fiduciary makes claim upon such  
45 funds or possessions, the operator shall notify the department that the funds remain unclaimed.  
46 Such unclaimed funds or possessions shall be disposed of as follows:

47 (a) If the unclaimed funds or possessions have a value totaling one hundred and fifty  
48 dollars or less, the funds or the proceeds of the sale of the possessions may be deposited in a fund  
49 to be used for the benefit of all residents of the facility by providing the residents social or  
50 educational activities. The facility shall keep an accounting of the acquisitions and expenditure  
51 of these funds; or

52 (b) If the unclaimed funds or possessions have a value greater than one hundred and fifty  
53 dollars, the funds or possessions shall be immediately presumed to be abandoned property  
54 [under] **pursuant to** sections 447.500 to 447.585, RSMo, and the procedures provided for in  
55 those sections shall apply notwithstanding any other provisions of those sections which require  
56 a period greater than two years for a presumption of abandonment;

57           (9) Upon ceasing to be the operator of a facility, all funds and property held in trust  
58 pursuant to this section shall be transferred to the new operator in accordance with sound  
59 accounting principles, and a closeout report signed by both the outgoing operator and the  
60 successor operator shall be prepared. The closeout report shall include a list of current balances  
61 of all funds held for residents respectively and an inventory of all property held for residents  
62 respectively. If the outgoing operator refuses to sign the closeout report, he **or she** shall state in  
63 writing the specific reasons for his **or her** failure to so sign, and the successor operator shall  
64 complete the report and attach an affidavit stating that the information contained therein is true  
65 to the best of [his] **such operator's** knowledge and belief. Such report shall be retained with all  
66 other records and accounts required to be maintained [under] **pursuant to** this section;

67           (10) Not be required to invest any funds received from or on behalf of a resident, nor to  
68 increase the principal of any such funds.

69           2. Any owner, operator, manager, employee, or affiliate of an owner or operator who  
70 receives any personal property or anything else of value from a resident, shall, if the thing  
71 received has a value of ten dollars or more, make a written statement giving the date it was  
72 received, from whom it was received, and its estimated value. Statements required to be made  
73 pursuant to this subsection shall be retained by the operator and shall be made available for  
74 inspection by the department, or by the department of mental health when the resident has been  
75 placed by that department, and by the resident, and [his] **the resident's** designee or legal  
76 guardian. Any person who fails to make a statement required by this subsection is guilty of a  
77 class C misdemeanor.

78           3. No owner, operator, manager, employee, or affiliate of an owner or operator shall in  
79 one calendar year receive any personal property or anything else of value from the residents of  
80 any facility which have a total estimated value in excess of one hundred dollars.

81           4. Subsections 2 and 3 of this section shall not apply if the property or other thing of  
82 value is held in trust in accordance with subsection 1 of this section, is received in payment for  
83 services rendered or pursuant to the terms of a lawful contract, or is received from a resident who  
84 is related to the recipient within the fourth degree of consanguinity or affinity.

85           5. Any operator who fails to maintain records or who fails to maintain any resident's  
86 personal funds in an account separate from the facility's funds as required by this section shall  
87 be guilty of a class C misdemeanor.

88           6. Any operator, or any affiliate or employee of an operator, who puts to his **or her** own  
89 use or the use of the facility or otherwise diverts from the resident's use any personal funds of  
90 the resident shall be guilty of a class A misdemeanor.

91           7. Any person having reasonable cause to believe that a misappropriation of a resident's  
92 funds or property has occurred may report such information to the department.

93           8. For each report the division shall attempt to obtain the name and address of the  
94 facility, the name of the facility employee, the name of the resident, information regarding the  
95 nature of the misappropriation, the name of the complainant, and any other information which  
96 might be helpful in an investigation.

97           9. Upon receipt of a report, the department shall initiate an investigation.

98           10. If the investigation indicates probable misappropriation of property or funds of a  
99 resident, the investigator shall refer the complaint together with [his] **the investigator's** report  
100 to the department director or [his] **the director's** designee for appropriate action.

101           11. Reports shall be confidential, as provided [under] **in** section 660.320, RSMo.

102           12. Anyone, except any person participating in or benefiting from the misappropriation  
103 of funds, who makes a report pursuant to this section or who testifies in any administrative or  
104 judicial proceeding arising from the report shall be immune from any civil or criminal liability  
105 for making such a report or for testifying except for liability for perjury, unless such person acted  
106 negligently, recklessly, in bad faith, or with malicious purpose.

107           13. Within five working days after a report required to be made [under] **pursuant to** this  
108 section is received, the person making the report shall be notified in writing of its receipt and of  
109 the initiation of the investigation.

110           14. No person who directs or exercises any authority in a facility shall evict, harass,  
111 dismiss or retaliate against a resident or employee because he **or she** or any member of [his] **the**  
112 **resident's or employee's** family has made a report of any violation or suspected violation of  
113 laws, ordinances or regulations applying to the facility which he **or she** has reasonable cause to  
114 believe has been committed or has occurred.

115           15. The [department] **state** shall maintain the employee disqualification list **pursuant**  
116 **to section 285.030, RSMo, and the department shall** place on the employee disqualification  
117 list the names of any persons who have been finally determined by the department, pursuant to  
118 section 660.315, RSMo, to have misappropriated any property or funds of a resident while  
119 employed in any facility.

210.903. 1. To protect children and the elderly in this state, and to promote family and  
2 community safety by providing information concerning family caregivers, there is hereby  
3 established within the department of health a "Family Care Safety Registry and Access Line"  
4 which shall be available by January 1, 2001.

5           2. The family care safety registry shall contain information on child-care workers' and  
6 elder-care workers' background and on child-care and elder-care providers through:

7           (1) The patrol's criminal record check system pursuant to section 43.540, RSMo,  
8 including state and national information, to the extent possible;

9           (2) Probable cause findings of abuse and neglect pursuant to sections 210.109 to

10 210.183;

11 (3) The [division of aging's] **state's** employee disqualification list pursuant to section  
12 [660.315] **285.030**, RSMo;

13 (4) Foster parent licensure denials, revocations and suspensions pursuant to section  
14 210.496;

15 (5) Child-care facility license denials, revocations and suspensions pursuant to sections  
16 210.201 to 210.259; and

17 (6) Residential living facility and nursing home license denials, revocations, suspensions  
18 and probationary status pursuant to chapter 198, RSMo.

210.909. 1. Upon submission of a completed registration form by a child-care worker  
2 or elder-care worker, the department, in coordination with the department of social services,  
3 shall:

4 (1) Determine if a probable cause finding of child abuse or neglect involving the  
5 applicant has been recorded pursuant to section 210.145;

6 (2) Determine if the applicant has been refused licensure or has experienced licensure  
7 suspension or revocation pursuant to section 210.496;

8 (3) Determine if the applicant has been placed on the **state's** employee disqualification  
9 list pursuant to section [660.315] **285.030**, RSMo;

10 (4) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether  
11 the applicant has any conviction, plea of guilty or nolo contendere, or a suspended execution of  
12 sentence to a felony charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568,  
13 569, 573, 575 and 578, RSMo; and

14 (5) If the background check involves a provider, determine if a facility has been refused  
15 licensure or has experienced licensure suspension, revocation or probationary status pursuant to  
16 sections 210.201 to 210.259 or chapter 198, RSMo.

17 2. Upon completion of the background check described in subsection 1 of this section,  
18 the department shall include information in the registry for each registrant as to whether any  
19 felony convictions, employee disqualification listings pursuant to section [660.315] **285.030**,  
20 RSMo, probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation  
21 or suspension have been documented through the records checks authorized pursuant to the  
22 provisions of sections 210.900 to 210.936.

23 3. The department shall notify such registrant in writing of the results of the  
24 determination recorded on the registry pursuant to this section.

**285.030. The governor shall designate a state department to maintain a centralized**  
2 **employee disqualification list to include all employee disqualification lists currently**  
3 **maintained by any department or agency of the state of Missouri. Such centralized**

4 **employee disqualification list shall include all names of persons who are disqualified from**  
5 **certain types of employment by a department regardless of whether the department**  
6 **currently maintains such an employee disqualification list. The department designated by**  
7 **the governor shall establish and maintain a toll-free telephone number for access to the**  
8 **centralized employee disqualification list.**

630.170. 1. A person convicted of any crime [under] **pursuant to** section 630.155 or  
2 630.160 shall be disqualified from holding any position in any public or private facility or day  
3 program operated, funded or licensed by the department or in any mental health facility or mental  
4 health program in which people are admitted on a voluntary or involuntary basis or are civilly  
5 detained pursuant to chapter 632, RSMo.

6 2. A person convicted of any felony offense against persons as defined in chapter 565,  
7 RSMo; of any felony sexual offense as defined in chapter 566, RSMo; of any felony offense  
8 defined in section 568.045, 568.050, 568.060, 569.020, 569.030, 569.040 or 569.050, RSMo,  
9 or of an equivalent felony offense shall be disqualified from holding any direct-care position in  
10 any public or private facility, day program, residential facility or specialized service operated,  
11 funded or licensed by the department or any mental health facility or mental health program in  
12 which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632,  
13 RSMo.

14 3. Any person disqualified [under] **pursuant to** the provisions of subsection 1 or 2 of  
15 this section may appeal the disqualification to the director of the department or the director's  
16 designee. The request shall be written and may not be made more than once every twelve  
17 months. The request may be granted by the director or designee if in the judgment of the director  
18 or designee a clear showing has been made by written submission only, that the person will not  
19 commit any additional acts for which the person had originally been disqualified for or any other  
20 acts that would be harmful to a patient, resident or client of a facility, program or service. The  
21 director or designee may grant the appeal subject to any conditions deemed appropriate and  
22 failure to comply with such terms may result in the person again being disqualified. Decisions  
23 by the director or designee [under] **pursuant to** the provisions of this subsection shall not be  
24 subject to appeal. The right to appeal [under] **pursuant to** this subsection shall not apply to  
25 persons convicted of any crime [under] **pursuant to** the provisions of chapter 566 or 568, RSMo,  
26 or section 565.020 or 565.021, RSMo.

27 **4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this**  
28 **section shall be placed on the state's employee disqualification list pursuant to section**  
29 **285.030, RSMo.**

660.300. 1. Beginning January 1, 1993, when any physician, dentist, chiropractor,  
2 optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,



3 Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services  
4 owner, in-home services operator, in-home services employee, or employee of the department  
5 of social services or of the department of health or of the department of mental health has  
6 reasonable cause to believe that an in-home services client has been abused or neglected, as a  
7 result of in-home services, he **or she** shall immediately report or cause a report to be made to the  
8 department.

9         2. Any person required in subsection 1 of this section to report or cause a report to be  
10 made to the department who fails to do so within a reasonable time after the act of abuse or  
11 neglect is guilty of a class A misdemeanor.

12         3. The report shall contain the names and addresses of the in-home services provider  
13 agency, the in-home services employee, the in-home services client, information regarding the  
14 nature of the abuse or neglect, the name of the complainant, and any other information which  
15 might be helpful in an investigation.

16         4. In addition to those persons required to report [under] **pursuant to** subsection 1 of this  
17 section, any other person having reasonable cause to believe that an in-home services client has  
18 been abused or neglected by an in-home services employee may report such information to the  
19 department.

20         5. Upon receipt of a report, the department shall initiate a prompt and thorough  
21 investigation.

22         6. If the investigation indicates possible abuse or neglect of an in-home services client,  
23 the investigator shall refer the complaint together with [his] **the investigator's** report to the  
24 department director or [his] **the director's** designee for appropriate action. If, during the  
25 investigation or at its completion, the department has reasonable cause to believe that immediate  
26 removal is necessary to protect the in-home services client from abuse or neglect, the department  
27 or the local prosecuting attorney may, or the attorney general upon request of the department  
28 shall, file a petition for temporary care and protection of the in-home services client in a circuit  
29 court of competent jurisdiction. The circuit court in which the petition is filed shall have  
30 equitable jurisdiction to issue an ex parte order granting the department authority for the  
31 temporary care and protection of the in-home services client, for a period not to exceed thirty  
32 days.

33         7. Reports shall be confidential, as provided [under] **in** section 660.320.

34         8. Anyone, except any person who has abused or neglected an in-home services client,  
35 who makes a report pursuant to this section or who testifies in any administrative or judicial  
36 proceeding arising from the report shall be immune from any civil or criminal liability for  
37 making such a report or for testifying except for liability for perjury, unless such person acted  
38 negligently, recklessly, in bad faith, or with malicious purpose.

39           9. Within five working days after a report required to be made [under] **pursuant to** this  
40 section is received, the person making the report shall be notified in writing of its receipt and of  
41 the initiation of the investigation.

42           10. No person who directs or exercises any authority in an in-home services provider  
43 agency shall harass, dismiss or retaliate against an in-home services client or an in-home services  
44 employee because [he] **the client or employee** or any member of [his] **the client's or**  
45 **employee's** family has made a report of any violation or suspected violation of laws, standards  
46 or regulations applying to the in-home services provider agency or any in-home services  
47 employee which he **or she** has reasonable cause to believe has been committed or has occurred.

48           11. Any person who knowingly abuses or neglects an in-home services client shall be  
49 guilty of a class D felony.

50           12. The [department] **state** shall maintain the employee disqualification list **pursuant**  
51 **to section 285.030, RSMo, and the department shall** place on the employee disqualification  
52 list the names of any persons who have been finally determined by the department, pursuant to  
53 section 660.315, to have recklessly, knowingly or purposely abused or neglected an in-home  
54 services client while employed by an in-home services provider agency.

660.305. 1. Any person having reasonable cause to believe that a misappropriation of  
2 an in-home services client's property or funds, or the falsification of any documents verifying  
3 service delivery to the in-home services client has occurred, may report such information to the  
4 department.

5           2. For each report the division shall attempt to obtain the names and addresses of the  
6 in-home services provider agency, the in-home services employee, the in-home services client,  
7 information regarding the nature of the misappropriation or falsification, the name of the  
8 complainant, and any other information which might be helpful in an investigation.

9           3. Any in-home services provider agency or in-home services employee who puts to his  
10 **or her** own use or the use of the in-home services provider agency or otherwise diverts from the  
11 in-home services client's use any personal property or funds of the in-home services client, or  
12 falsifies any documents for service delivery, shall be guilty of a class A misdemeanor.

13           4. Upon receipt of a report, the department shall initiate an investigation.

14           5. If the investigation indicates probable misappropriation of property or funds, or  
15 falsification of any documents for service delivery of an in-home services client, the investigator  
16 shall refer the complaint together with [his] **the investigator's** report to the department director  
17 or [his] **the director's** designee for appropriate action.

18           6. Reports shall be confidential, as provided [under] **in** section 660.320.

19           7. Anyone, except any person participating in or benefiting from the misappropriation  
20 of funds, who makes a report pursuant to this section or who testifies in any administrative or

21 judicial proceeding arising from the report shall be immune from any civil or criminal liability  
22 for making such a report or for testifying except for liability for perjury, unless such person acted  
23 negligently, recklessly, in bad faith, or with malicious purpose.

24 8. Within five working days after a report required to be made **[under]** **pursuant to** this  
25 section is received, the person making the report shall be notified in writing of its receipt and of  
26 the initiation of the investigation.

27 9. No person who directs or exercises any authority in an in-home services provider  
28 agency shall harass, dismiss or retaliate against an in-home services client or employee because  
29 **[he]** **the client or employee**, or any member of **[his]** **the client's or employee's** family has made  
30 a report of any violation or suspected violation of laws, ordinances or regulations applying to the  
31 in-home services provider agency or any in-home services employee which he **or she** has  
32 reasonable cause to believe has been committed or has occurred.

33 10. The **[department]** **state** shall maintain the employee disqualification list **pursuant**  
34 **to section 285.030, RSMo, and the department shall** place on the employee disqualification  
35 list the names of any persons who have been finally determined by the department to, pursuant  
36 to section 660.315, have misappropriated any property or funds, or falsified any documents for  
37 service delivery of an in-home services client while employed by an in-home services provider  
38 agency.

660.315. 1. After an investigation and a determination has been made to place a person's  
2 name on the employee disqualification list, that person shall be notified in writing mailed to his  
3 **or her** last known address that:

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

6 (2) His **or her** name will be included in the employee disqualification list of the  
7 **[department]** **state**;

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

9 (4) His **or her** rights and the procedure to challenge the allegation.

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

14 3. If the person so notified wishes to challenge the allegation, he **or she** may file an  
15 application for a hearing with the department. The department shall grant the application within  
16 thirty days after receipt by the department and set the matter for hearing, or the department shall  
17 notify the applicant that, after review, the allegation has been held to be unfounded and the  
18 applicant's name will not be listed.

19           4. If a person's name is included on the employee disqualification list without notice by  
20 the department, such person may file a request with the department for removal of the name or  
21 for a hearing. Within thirty days after receipt of the request, the department shall either remove  
22 the name from the list or grant a hearing and set a date therefor.

23           5. Any hearing shall be conducted in the county of the person's residence by the director  
24 of the division of aging or [his] **the director's** designee. The provisions of chapter 536, RSMo,  
25 for a contested case except those provisions or amendments which are in conflict with this  
26 section, shall apply to and govern the proceedings contained in this section and the rights and  
27 duties of the parties involved. The person appealing such an action shall be entitled to present  
28 evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the allegations.

29           6. Upon the record made at the hearing, the director of the division of aging shall  
30 determine all questions presented and shall determine whether the person shall be listed on the  
31 employee disqualification list. The director of the division of aging shall clearly state the reasons  
32 for his **or her** decision and shall include a statement of findings of fact and conclusions of law  
33 pertinent to the questions in issue.

34           7. A person aggrieved by the decision following the hearing shall be informed of his **or**  
35 **her** right to seek judicial review as provided [under] **in** chapter 536, RSMo. If the person fails  
36 to appeal the director's findings, those findings shall constitute a final determination that the  
37 person shall be placed on the employee disqualification list.

38           8. A decision by the director shall be inadmissible in any civil action brought against a  
39 facility or the in-home services provider agency and arising out of the facts and circumstances  
40 which brought about the employment disqualification proceeding, unless the civil action is  
41 brought against the facility or the in-home services provider agency by the department of social  
42 services or one of its divisions.

43           9. The length of time the person's name shall appear on the employee disqualification  
44 list shall be determined by the director or [his] **the director's** designee, based upon the  
45 following:

46           (1) Whether the person acted recklessly, knowingly or purposely, as defined in chapter  
47 562, RSMo;

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

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

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

54           (5) Any mitigating circumstances; and

55 (6) Whether alternative sanctions resulting in conditions of continued employment are  
56 appropriate in lieu of placing a person's name on the employee disqualification list. Such  
57 conditions of employment may include, but are not limited to, additional training and employee  
58 counseling. Conditional employment shall terminate upon the expiration of the designated  
59 length of time and the person's submitting documentation which fulfills the division's  
60 requirements.

61 10. The removal of any person's name from the list [under] **pursuant to** this section shall  
62 not prevent the director from keeping records of all acts finally determined to have occurred  
63 [under] **pursuant to** this section.

64 11. The [department shall provide the] list maintained pursuant to [this] section **285.030,**  
65 **RSMo, shall be provided** to other state departments upon request and to any person, corporation  
66 or association who:

67 (1) Is licensed as an operator [under] **pursuant to** chapter 198, RSMo;

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

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

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

72 (5) Is an entity licensed [under] **pursuant to** chapter 197, RSMo. The department shall  
73 inform any person listed above who inquires of the division of aging whether or not a particular  
74 name is on the list.

75

76 The division may require that the request be made in writing.

77 12. No person, corporation or association who received the employee disqualification  
78 list [under] **pursuant to** subsection 11 of this section shall knowingly employ any person who  
79 is on the employee disqualification list. Any person, corporation or association who received the  
80 employee disqualification list [under] **pursuant to** subsection 11 of this section, or any person  
81 responsible for providing health care service, who declines to employ or terminates a person  
82 whose name is listed in this section shall be immune from suit by that person or anyone else  
83 acting for or in behalf of that person for the failure to employ or for the termination of the person  
84 whose name is listed on the employee disqualification list.

85 13. Any person who has been listed on the employee disqualification list may request  
86 that the director remove his **or her** name from the employee disqualification list. The request  
87 shall be written and may not be made more than once every twelve months. The request will be  
88 granted by the director upon a clear showing, by written submission only, that the person will  
89 not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the  
90 falsification of any documents of service delivery to an in-home services client. The director

91 may make conditional the removal of a person's name from the list on any terms that the director  
92 deems appropriate, and failure to comply with such terms may result in the person's name being  
93 relisted. The director's determination of whether to remove the person's name from the list is not  
94 subject to appeal.

660.317. 1. For the purposes of this section, the term "provider" means any person,  
2 corporation or association who:

- 3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- 4 (2) Provides in-home services under contract with the department;
- 5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in  
6 health care facilities; or
- 7 (4) Is an entity licensed pursuant to chapter 197, RSMo;
- 8 (5) Is a public or private facility, day program, residential facility or specialized service  
9 operated, funded or licensed by the department of mental health.

10 2. For the purpose of this section "patient or resident" has the same meaning as such term  
11 is defined in section 43.540, RSMo.

12 3. Beginning August 28, 1997, not later than two working days of hiring any person for  
13 a full-time, part-time or temporary position to have contact with any patient or resident the  
14 provider shall, or in the case of temporary employees hired through an employment agency, the  
15 employment agency shall prior to sending a temporary employee to a provider:

16 (1) Request a criminal background check as provided in section 43.540, RSMo.  
17 Completion of an inquiry to the highway patrol for criminal records that are available for  
18 disclosure to a provider for the purpose of conducting an employee criminal records background  
19 check shall be deemed to fulfill the provider's duty to conduct employee criminal background  
20 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection  
21 shall not be construed to exempt a provider from further inquiry pursuant to common law  
22 requirements governing due diligence; and

23 (2) Make an inquiry to the [department of social services] **state employee**  
24 **disqualification list pursuant to section 285.030, RSMo**, whether the person is listed on the  
25 employee disqualification list as provided in section 660.315.

26 4. When the provider requests a criminal background check pursuant to section 43.530,  
27 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost  
28 of such record check.

29 5. An applicant for a position to have contact with patients or residents of a provider  
30 shall:

- 31 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may  
32 request a criminal records review;

33 (2) Disclose the applicant's criminal history. For the purposes of this subdivision  
34 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge  
35 and shall include any suspended imposition of sentence, any suspended execution of sentence  
36 or any period of probation or parole; and

37 (3) Disclose if the applicant is listed on the **state's** employee disqualification list [as  
38 provided in section 660.315] **pursuant to section 285.030, RSMo.**

39 6. An applicant who knowingly fails to disclose his **or her** criminal history as required  
40 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class  
41 A misdemeanor if the provider knowingly hires a person to have contact with patients or  
42 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or  
43 any other state or has been found guilty of a crime, which if committed in Missouri would be a  
44 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection  
45 3 of section 198.070, RSMo, or section 568.020, RSMo.

46 7. The highway patrol shall examine whether protocols can be developed to allow a  
47 provider to request a statewide fingerprint criminal records review check through local law  
48 enforcement agencies.

49 8. A provider may use a private investigatory agency rather than the highway patrol to  
50 do a criminal history records review check, and alternatively, the applicant pays the private  
51 investigatory agency such fees as the provider and such agency shall agree.

52 9. The department of social services shall promulgate rules and regulations to waive the  
53 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good  
54 cause" means the department has made a determination by examining the employee's prior work  
55 history and other relevant factors that such employee does not present a risk to the health or  
56 safety of residents.

660.320. Reports confidential [under] **pursuant to** section 198.070, RSMo, and sections  
2 660.300 to 660.315 shall not be deemed a public record and shall not be subject to the provisions  
3 of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person  
4 mentioned in the reports shall not be disclosed unless:

5 (1) The complainant, resident or the in-home services client mentioned agrees to  
6 disclosure of his **or her** name;

7 (2) The department determines that disclosure is necessary in order to prevent further  
8 abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying  
9 service delivery to an in-home services client;

10 (3) Release of a name is required for conformance with a lawful subpoena;

11 (4) Release of a name is required in connection with a review by the administrative  
12 hearing commission in accordance with section 198.039, RSMo;

13           (5) The department determines that release of a name is appropriate when forwarding  
14 a report of findings of an investigation to a licensing authority; or

15           (6) Release of a name is requested by the division of family services for the purpose of  
16 licensure [under] **pursuant to** chapter 210, RSMo.