

FIRST REGULAR SESSION

HOUSE BILL NO. 574

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor) AND PHILLIPS (Co-sponsor).

Read 1st time February 16, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1338L.011

AN ACT

To repeal sections 210.025, 210.150, 210.903, 210.909, and 211.032, RSMo, and to enact in lieu thereof five new sections relating to child abuse and neglect.

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

Section A. Sections 210.025, 210.150, 210.903, 210.909, and 211.032, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 210.025, 210.150,
3 210.903, 210.909, and 211.032, to read as follows:

210.025. 1. To qualify for receipt of state or federal funds for providing child-care
2 services in the home either by direct payment or through reimbursement to a child-care
3 beneficiary, an applicant and any person over the age of seventeen who is living in the applicant's
4 home shall be required to submit to a criminal background check pursuant to section 43.540,
5 RSMo, and a check of the central registry for child abuse established in section 210.145.
6 Effective January 1, 2001, the requirements of this subsection or subsection 2 of this section shall
7 be satisfied through registration with the family care safety registry established in sections
8 210.900 to 210.936. Any costs associated with such checks shall be paid by the applicant.

9 2. Upon receipt of an application for state or federal funds for providing child-care
10 services in the home, the family support division shall:

11 (1) Determine if a finding of child abuse or neglect by probable cause prior to August
12 28, 2004, or by a preponderance of the evidence after August 28, 2004, involving the applicant
13 or any person over the age of seventeen who is living in the applicant's home has been recorded
14 pursuant to section 210.145 or 210.221 **which directly resulted in the termination of parental**
15 **rights of the applicant;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (2) Determine if the applicant or any person over the age of seventeen who is living in
17 the applicant's home has been refused licensure or has experienced licensure suspension or
18 revocation pursuant to section 210.221 or 210.496; and

19 (3) Upon initial application, require the applicant to submit to fingerprinting and request
20 a criminal background check of the applicant and any person over the age of seventeen who is
21 living in the applicant's home pursuant to section 43.540, RSMo, and section 210.487, and
22 inquire of the applicant whether any children less than seventeen years of age residing in the
23 applicant's home have ever been certified as an adult and convicted of, or pled guilty or nolo
24 contendere to any crime.

25 3. Except as otherwise provided in subsection 4 of this section, upon completion of the
26 background checks in subsection 2 of this section, an applicant shall be denied state or federal
27 funds for providing child care if such applicant, any person over the age of seventeen who is
28 living in the applicant's home, and any child less than seventeen years of age who is living in the
29 applicant's home and who the division has determined has been certified as an adult for the
30 commission of a crime:

31 (1) Has had a finding of child abuse or neglect by probable cause prior to August 28,
32 2004, or by a preponderance of the evidence after August 28, 2004, pursuant to section 210.145
33 or section 210.152 **which directly resulted in the termination of parental rights of the**
34 **applicant;**

35 (2) Has been refused licensure or has experienced licensure suspension or revocation
36 pursuant to section 210.496;

37 (3) Has pled guilty or nolo contendere to or been found guilty of any felony for an
38 offense against the person as defined by chapter 565, RSMo, or any other offense against the
39 person involving the endangerment of a child as prescribed by law; of any misdemeanor or
40 felony for a sexual offense as defined by chapter 566, RSMo; of any misdemeanor or felony for
41 an offense against the family as defined in chapter 568, RSMo, with the exception of the sale of
42 fireworks, as defined in section 320.110, RSMo, to a child under the age of eighteen; of any
43 misdemeanor or felony for pornography or related offense as defined by chapter 573, RSMo; or
44 of any similar crime in any federal, state, municipal or other court of similar jurisdiction of which
45 the director has knowledge or any offenses or reports which will disqualify an applicant from
46 receiving state or federal funds.

47 4. An applicant shall be given an opportunity by the division to offer any extenuating or
48 mitigating circumstances regarding the findings, refusals or violations against such applicant or
49 any person over the age of seventeen or less than seventeen who is living in the applicant's home
50 listed in subsection 2 of this section. Such extenuating and mitigating circumstances may be
51 considered by the division in its determination of whether to permit such applicant to receive

52 state or federal funds for providing child care in the home.

53 5. An applicant who has been denied state or federal funds for providing child care in
54 the home may appeal such denial decision in accordance with the provisions of section 208.080,
55 RSMo.

56 6. If an applicant is denied state or federal funds for providing child care in the home
57 based on the background check results for any person over the age of seventeen who is living in
58 the applicant's home, the applicant shall not apply for such funds until such person is no longer
59 living in the applicant's home.

60 7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
61 is created under the authority delegated in this section shall become effective only if it complies
62 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
63 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and
64 effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity
65 of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable
66 provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the
67 powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
68 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the
69 grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be
70 invalid and void.

 210.150. 1. The children's division shall ensure the confidentiality of all reports and
2 records made pursuant to sections 210.109 to 210.183 and maintained by the division, its local
3 offices, the central registry, and other appropriate persons, officials, and institutions pursuant to
4 sections 210.109 to 210.183. To protect the rights of the family and the child named in the report
5 as a victim, the children's division shall establish guidelines which will ensure that any disclosure
6 of information concerning the abuse and neglect involving that child is made only to persons or
7 agencies that have a right to such information. The division may require persons to make written
8 requests for access to records maintained by the division. The division shall only release
9 information to persons who have a right to such information. The division shall notify persons
10 receiving information pursuant to subdivisions (2), (7), (8) and (9) of subsection 2 of this section
11 of the purpose for which the information is released and of the penalties for unauthorized
12 dissemination of information. Such information shall be used only for the purpose for which the
13 information is released.

14 2. Only the following persons shall have access to investigation records contained in the
15 central registry:

16 (1) Appropriate federal, state or local criminal justice agency personnel, or any agent of
17 such entity, with a need for such information under the law to protect children from abuse or

18 neglect;

19 (2) A physician or a designated agent who reasonably believes that the child being
20 examined may be abused or neglected;

21 (3) Appropriate staff of the division and of its local offices, including interdisciplinary
22 teams which are formed to assist the division in investigation, evaluation and treatment of child
23 abuse and neglect cases or a multidisciplinary provider of professional treatment services for a
24 child referred to the provider;

25 (4) Any child named in the report as a victim, or a legal representative, or the parent, if
26 not the alleged perpetrator, or guardian of such person when such person is a minor, or is
27 mentally ill or otherwise incompetent, but the names of reporters shall not be furnished to
28 persons in this category. Prior to the release of any identifying information, the division shall
29 determine if the release of such identifying information may place a person's life or safety in
30 danger. If the division makes the determination that a person's life or safety may be in danger,
31 the identifying information shall not be released. The division shall provide a method for
32 confirming or certifying that a designee is acting on behalf of a subject;

33 (5) Any alleged perpetrator named in the report, but the names of reporters shall not be
34 furnished to persons in this category. Prior to the release of any identifying information, the
35 division shall determine if the release of such identifying information may place a person's life
36 or safety in danger. If the division makes the determination that a person's life or safety may be
37 in danger, the identifying information shall not be released. However, the investigation reports
38 will not be released to any alleged perpetrator with pending criminal charges arising out of the
39 facts and circumstances named in the investigation records until an indictment is returned or an
40 information filed;

41 (6) A grand jury, juvenile officer, prosecuting attorney, law enforcement officer involved
42 in the investigation of child abuse or neglect, juvenile court or other court conducting abuse or
43 neglect or child protective proceedings or child custody proceedings, and other federal, state and
44 local government entities, or any agent of such entity, with a need for such information in order
45 to carry out its responsibilities under the law to protect children from abuse or neglect;

46 (7) Any person engaged in a bona fide research purpose, with the permission of the
47 director; provided, however, that no information identifying the child named in the report as a
48 victim or the reporters shall be made available to the researcher, unless the identifying
49 information is essential to the research or evaluation and the child named in the report as a victim
50 or, if the child is less than eighteen years of age, through the child's parent, or guardian provides
51 written permission;

52 (8) Any child-care facility; child-placing agency; residential-care facility, including
53 group homes; juvenile courts; public or private elementary schools; public or private secondary

54 schools; or any other public or private agency exercising temporary supervision over a child or
55 providing or having care or custody of a child who may request an examination of the central
56 registry **only for substantiated reports directly resulting in the termination of parental**
57 **rights of such person** from the division for all employees and volunteers or prospective
58 employees and volunteers, who do or will provide services or care to children. Any agency or
59 business recognized by the division or business which provides training and places or
60 recommends people for employment or for volunteers in positions where they will provide
61 services or care to children may request the division to provide an examination of the central
62 registry **only for substantiated reports directly resulting in the termination of parental**
63 **rights of such person**. Such agency or business shall provide verification of its status as a
64 recognized agency. Requests for examinations shall be made to the division director or the
65 director's designee in writing by the chief administrative officer of the above homes, centers,
66 public and private elementary schools, public and private secondary schools, agencies, or courts.
67 The division shall respond in writing to that officer. The response shall include information
68 pertaining to the nature and disposition of any report or reports of abuse or neglect revealed by
69 the examination of the central registry **if the parental rights of such person have been**
70 **terminated as a direct result of the substantiated report**. This response shall not include any
71 identifying information regarding any person other than the alleged perpetrator of the abuse or
72 neglect;

73 (9) Any parent or legal guardian who inquires about a child abuse or neglect report
74 involving a specific person or child-care facility who does or may provide services or care to a
75 child of the person requesting the information **shall be provided information only for**
76 **substantiated reports directly resulting in the termination of parental rights of such**
77 **person**. Request for examinations shall be made to the division director or the director's
78 designee, in writing, by the parent or legal guardian of the child and shall be accompanied with
79 a signed and notarized release form from the person who does or may provide care or services
80 to the child. The notarized release form shall include the full name, date of birth and Social
81 Security number of the person who does or may provide care or services to a child. The response
82 shall include information pertaining to the nature and disposition of any report or reports of
83 abuse or neglect revealed by the examination of the central registry **if the parental rights of**
84 **such person have been terminated as a direct result of the substantiated report**. This
85 response shall not include any identifying information regarding any person other than the
86 alleged perpetrator of the abuse or neglect. The response shall be given within ten working days
87 of the time it was received by the division;

88 (10) Any person who inquires about a child abuse or neglect report involving a specific
89 child-care facility, child-placing agency, residential-care facility, public and private elementary

90 schools, public and private secondary schools, juvenile court or other state agency **shall be**
91 **provided information only for substantiated reports directly resulting in the termination**
92 **of parental rights of such person.** The information available to these persons is limited to the
93 nature and disposition of any report contained in the central registry **if the parental rights of**
94 **such person have been terminated as a direct result of the substantiated report** and shall
95 not include any identifying information pertaining to any person mentioned in the report;

96 (11) Any state agency acting pursuant to statutes regarding a license of any person,
97 institution, or agency which provides care for or services to children **if the parental rights of**
98 **such person have been terminated as a direct result of the substantiated report;**

99 (12) Any child fatality review panel established pursuant to section 210.192 or any state
100 child fatality review panel established pursuant to section 210.195;

101 (13) Any person who is a tenure-track or full-time research faculty member at an
102 accredited institution of higher education engaged in scholarly research, with the permission of
103 the director. Prior to the release of any identifying information, the director shall require the
104 researcher to present a plan for maintaining the confidentiality of the identifying information.
105 The researcher shall be prohibited from releasing the identifying information of individual cases.

106

107 **Information regarding substantiated reports not resulting in termination of parental rights**
108 **shall only be disclosed to entities listed in subdivisions (8), (9), (10), and (11) of this**
109 **subsection upon court order as provided in section 211.032, RSMo.**

110 3. Only the following persons shall have access to records maintained by the division
111 pursuant to section 210.152 for which the division has received a report of child abuse and
112 neglect and which the division has determined that there is insufficient evidence or in which the
113 division proceeded with the family assessment and services approach:

114 (1) Appropriate staff of the division;

115 (2) Any child named in the report as a victim, or a legal representative, or the parent or
116 guardian of such person when such person is a minor, or is mentally ill or otherwise incompetent.
117 The names or other identifying information of reporters shall not be furnished to persons in this
118 category. Prior to the release of any identifying information, the division shall determine if the
119 release of such identifying information may place a person's life or safety in danger. If the
120 division makes the determination that a person's life or safety may be in danger, the identifying
121 information shall not be released. The division shall provide for a method for confirming or
122 certifying that a designee is acting on behalf of a subject;

123 (3) Any alleged perpetrator named in the report, but the names of reporters shall not be
124 furnished to persons in this category. Prior to the release of any identifying information, the
125 division shall determine if the release of such identifying information may place a person's life

126 or safety in danger. If the division makes the determination that a person's life or safety may be
127 in danger, the identifying information shall not be released. However, the investigation reports
128 will not be released to any alleged perpetrator with pending criminal charges arising out of the
129 facts and circumstances named in the investigation records until an indictment is returned or an
130 information filed;

131 (4) Any child fatality review panel established pursuant to section 210.192 or any state
132 child fatality review panel established pursuant to section 210.195;

133 (5) Appropriate criminal justice agency personnel or juvenile officer;

134 (6) Multidisciplinary agency or individual including a physician or physician's designee
135 who is providing services to the child or family, with the consent of the parent or guardian of the
136 child or legal representative of the child;

137 (7) Any person engaged in bona fide research purpose, with the permission of the
138 director; provided, however, that no information identifying the subjects of the reports or the
139 reporters shall be made available to the researcher, unless the identifying information is essential
140 to the research or evaluation and the subject, or if a child, through the child's parent or guardian,
141 provides written permission.

142 4. Any person who knowingly violates the provisions of this section, or who permits or
143 encourages the unauthorized dissemination of information contained in the information system
144 or the central registry and in reports and records made pursuant to sections 210.109 to 210.183,
145 shall be guilty of a class A misdemeanor.

146 5. Nothing in this section shall preclude the release of findings or information about
147 cases which resulted in a child fatality or near fatality. Such release is at the sole discretion of
148 the director of the department of social services, based upon a review of the potential harm to
149 other children within the immediate family.

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

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

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

10 (2) Probable cause findings of abuse and neglect prior to August 28, 2004, or findings
11 of abuse and neglect by a preponderance of the evidence after August 28, 2004, pursuant to
12 sections 210.109 to 210.183 **which directly resulted in the termination of parental rights of**

13 **such person** and, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant
14 to section 570.145, RSMo;

15 (3) The division of aging's employee disqualification list pursuant to section 660.315,
16 RSMo;

17 (4) As of January 1, 2003, the department of mental health's employee disqualification
18 registry;

19 (5) Foster parent licensure denials, revocations and involuntary suspensions pursuant to
20 section 210.496;

21 (6) Child-care facility license denials, revocations and suspensions pursuant to sections
22 210.201 to 210.259;

23 (7) Residential living facility and nursing home license denials, revocations, suspensions
24 and probationary status pursuant to chapter 198, RSMo; and

25 (8) As of January 1, 2004, a check of the patrol's Missouri uniform law enforcement
26 system (MULES) for sexual offender registrations pursuant to section 589.400, RSMo.

210.909. 1. Upon submission of a completed registration form by a child-care worker,
2 elder-care worker or personal-care attendant, the department shall:

3 (1) Determine if a probable cause finding of child abuse or neglect prior to August 28,
4 2004, or a finding of child abuse or neglect by a preponderance of the evidence after August 28,
5 2004, involving the applicant has been recorded pursuant to sections 210.109 to 210.183 **and**
6 **which directly resulted in the termination of parental rights of such applicant** and, as of
7 January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or
8 disabled pursuant to section 570.145, RSMo;

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

11 (3) Determine if the applicant has been placed on the employee disqualification list
12 pursuant to section 660.315, RSMo;

13 (4) As of January 1, 2003, determine if the applicant is listed on the department of
14 mental health's employee disqualification registry;

15 (5) Determine through a request to the patrol pursuant to section 43.540, RSMo, whether
16 the applicant has any criminal history record for a felony or misdemeanor or any offense for
17 which the person has registered pursuant to sections 589.400 to 589.425, RSMo; and

18 (6) If the background check involves a provider, determine if a facility has been refused
19 licensure or has experienced licensure suspension, revocation or probationary status pursuant to
20 sections 210.201 to 210.259 or chapter 198, RSMo; and

21 (7) As of January 1, 2004, determine through a request to the patrol if the applicant is
22 a registered sexual offender pursuant to section 589.400, RSMo, listed in the Missouri uniform

23 law enforcement system (MULES).

24 2. Upon completion of the background check described in subsection 1 of this section,
25 the department shall include information in the registry for each registrant as to whether any
26 convictions, employee disqualification listings, registry listings, probable cause findings, pleas
27 of guilty or nolo contendere, or license denial, revocation or suspension have been documented
28 through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

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

 211.032. 1. Except as otherwise provided in a circuit participating in a pilot project
2 established by the Missouri supreme court, when a child or person seventeen years of age,
3 alleged to be in need of care and treatment pursuant to subdivision (1) of subsection 1 of section
4 211.031, is taken into custody, the juvenile or family court shall notify the parties of the right to
5 have a protective custody hearing. Such notification shall be in writing.

6 2. Upon request from any party, the court shall hold a protective custody hearing. Such
7 hearing shall be held within three days of the request for a hearing, excluding Saturdays, Sundays
8 and legal holidays. For circuits participating in a pilot project established by the Missouri
9 supreme court, the parties shall be notified at the status conference of their right to request a
10 protective custody hearing.

11 3. No later than February 1, 2005, the Missouri supreme court shall require a mandatory
12 court proceeding to be held within three days, excluding Saturdays, Sundays, and legal holidays,
13 in all cases under subdivision (1) of subsection 1 of section 211.031. The Missouri supreme
14 court shall promulgate rules for the implementation of such mandatory court proceedings and
15 may consider recommendations from any pilot projects established by the Missouri supreme
16 court regarding such proceedings. Nothing in this subsection shall prevent the Missouri supreme
17 court from expanding pilot projects prior to the implementation of this subsection.

18 4. The court shall hold an adjudication hearing no later than sixty days after the child has
19 been taken into custody. The court shall notify the parties in writing of the specific date, time,
20 and place of such hearing. If at such hearing the court determines that sufficient cause exists for
21 the child to remain in the custody of the state, the court shall conduct a dispositional hearing no
22 later than ninety days after the child has been taken into custody and shall conduct review
23 hearings regarding the reunification efforts made by the division every ninety to one hundred
24 twenty days for the first year the child is in the custody of the division. After the first year,
25 review hearings shall be held as necessary, but in no event less than once every six months for
26 as long as the child is in the custody of the division.

27 5. At all hearings held pursuant to this section the court may receive testimony and other
28 evidence relevant to the necessity of detaining the child out of the custody of the parents,

29 guardian or custodian.

30 6. By January 1, 2005, the supreme court shall develop rules regarding the effect of
31 untimely hearings.

32 7. **At any hearing held under this section, the court may order the children's**
33 **division to release information regarding any substantiated reports of abuse that have not**
34 **resulted in a termination of parental rights to entities listed in subdivisions (8), (9), (10),**
35 **and (11) of subsection 2 of section 210.150, RSMo, if the court determines that release of**
36 **such information is required based on the severity of the allegations, the sufficiency of**
37 **evidence for substantiation, and the immediate risk to the safety of children if such person**
38 **has contact with children in an employment setting.**

39 8. If the placement of any child in the custody of the children's division will result in the
40 child attending a school other than the school the child was attending when taken into custody:

41 (1) The child's records from such school shall automatically be forwarded to the school
42 that the child is transferring to upon notification within two business days by the division; or

43 (2) Upon request of the foster family, the guardian ad litem, or the volunteer advocate
44 and whenever possible, the child shall be permitted to continue to attend the same school that
45 the child was enrolled in and attending at the time the child was taken into custody by the
46 division. The division, in consultation with the department of elementary and secondary
47 education, shall establish the necessary procedures to implement the provisions of this
48 subsection.