

FIRST REGULAR SESSION

HOUSE BILL NO. 694

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ANDERSON.

1433H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 43.540, RSMo, and to enact in lieu thereof three new sections relating to criminal history record checks, with penalty provisions and an emergency clause.

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

Section A. Section 43.540, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 43.539, 43.540, and 43.548, to read as follows:

43.539. 1. As used in this section, the following terms 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 children, the elderly, or disabled persons;

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

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

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.

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

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

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

30 (8) "Qualified entity", a person, business, or organization that provides care, care
31 placement, or educational services for children, the elderly, or persons with disabilities as
32 patients or residents, including a business or organization that licenses or certifies others
33 to provide care or care placement services;

34 (9) "Youth services agency", any agency, school, or association that provides
35 programs, care, or treatment for or exercises supervision over minors.

36 2. The central repository shall have the authority to submit applicant fingerprints
37 to the National Rap Back program to be retained for the purpose of being searched against
38 future submissions to the National Rap Back program, including latent
39 fingerprint searches. Qualified entities may conduct Missouri and national criminal record
40 reviews on applicants and participate in Missouri and National Rap Back programs for the
41 purpose of determining suitability or fitness for a permit, license, or employment, and shall
42 abide by the following requirements:

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

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

51 (3) Qualified entities shall notify applicants subject to enrollment in the National
52 Rap Back program that the applicant's fingerprints, while retained, may continue to be

53 compared against other fingerprints submitted or retained by the Federal Bureau of
54 Investigation, including latent fingerprints;

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

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

64 (6) Each request shall be accompanied by a reasonable fee, as provided in section
65 43.530, plus the amount required, if any, by the Federal Bureau of Investigation for the
66 national criminal record review and enrollment in the National Rap Back program in
67 compliance with the National Child Protection Act of 1993, as amended, and other
68 applicable state or federal laws;

69 (7) The Missouri state highway patrol shall provide, directly to the qualified entity,
70 the applicant's state criminal history records that are not exempt from disclosure under
71 chapter 610 or otherwise confidential under law;

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

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

82 (10) The qualified entity shall notify the applicant, in writing, of his or her right to
83 obtain a copy of any criminal record review, including the criminal history records, if any,
84 contained in the report and of the applicant's right to challenge the accuracy and
85 completeness of any information contained in any such report and obtain a determination
86 as to the validity of such challenge before a final determination regarding the applicant is
87 made by the qualified entity reviewing the criminal history information. A qualified entity
88 that is required by law to apply screening criteria, including any right to contest or request

an exemption from disqualification, shall apply such screening criteria to the state and national criminal history record information received from the Missouri state highway patrol for those applicants subject to the required screening; and

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

3. The criminal record review shall include the submission of fingerprints to the Missouri state highway patrol, who shall conduct a Missouri criminal record review, including closed record information under section 610.120. The Missouri state highway patrol shall also forward a copy of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal record review.

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

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

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

(a) Name;

(b) Date of birth;

(c) Height;

(d) Weight;

(e) Eye color;

(f) Hair color;

(g) Gender;

(h) Race;

(i) Place of birth;

(j) Social Security number; and

(k) The applicant's photo.

5. Any information received by an authorized state agency or a qualified entity under the provisions of this section shall be used solely for internal purposes in determining the suitability of an applicant. The dissemination of criminal history information from the Federal Bureau of Investigation beyond the authorized state agency or related governmental entity is prohibited. All criminal record check information shall

be confidential, and any person who discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

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

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

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

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

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

43.540. 1. As used in this section, the following terms 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; **or**

(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;~~

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

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

~~(5)~~ (4) "National criminal record review", a review of the criminal history records maintained by the Federal Bureau of Investigation;

19 ~~[(6)]~~ **(5)** "National Rap Back program", shall include any type of automatic notification
20 made by the Federal Bureau of Investigation through the Missouri state highway patrol to a
21 qualified entity indicating that an applicant who is employed, licensed, or otherwise under the
22 purview of that entity has been arrested for a reported criminal offense outside the state of
23 Missouri and the fingerprints for that arrest were forwarded to the Federal Bureau of
24 Investigation by the arresting agency;

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

29 ~~———(8)]~~ **(6)** "Qualified entity", an entity that is:

30 ~~(a) [A person, business, or organization, whether public or private, for profit, not for~~
31 ~~profit, or voluntary, that provides care, care placement, or educational services for children, the~~
32 ~~elderly, or persons with disabilities as patients or residents, including a business or organization~~
33 ~~that licenses or certifies others to provide care or care placement services;~~

34 ~~———(b)]~~ An office or division of state, county, or municipal government, including a political
35 subdivision or a board or commission designated by statute or approved local ordinance, to issue
36 or renew a license, permit, certification, or registration of authority;

37 ~~[(e)]~~ **(b)** An office or division of state, county, or municipal government, including a
38 political subdivision or a board or commission designated by statute or approved local ordinance,
39 to make fitness determinations on applications for state, county, or municipal government
40 employment;

41 ~~[(d)]~~ **(c)** A criminal justice agency, including law enforcement agencies that screen
42 persons seeking issuance or renewal of a license, permit, certificate, or registration to purchase
43 or possess a firearm; or

44 ~~[(e)]~~ **(d)** Any entity that is authorized to obtain criminal history record information under
45 28 CFR 20.33[;

46 ~~———(9) "Youth services agency", any public or private agency, school, or association which~~
47 ~~provides programs, care or treatment for or which exercises supervision over minors].~~

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

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

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

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

66 (4) The criminal record review and Rap Back process described in this section shall be
67 voluntary and conform to the requirements established in ~~[the National Child Protection Act of~~
68 ~~1993, as amended,]~~ **Pub. L. 92-544** and other applicable state or federal law. As a part of the
69 registration, the qualified entity shall agree to comply with state and federal law and shall
70 indicate so by signing an agreement approved by the Missouri state highway patrol. The
71 Missouri state highway patrol may periodically audit qualified entities to ensure compliance with
72 federal law and this section;

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

75 (6) Each request shall be accompanied by a reasonable fee, as provided in section
76 43.530, plus the amount required, if any, by the Federal Bureau of Investigation for the national
77 criminal record review and enrollment in the National Rap Back program in compliance with
78 ~~[the National Child Protection Act of 1993, as amended, and other applicable]~~ **applicable** state
79 or federal laws;

80 (7) The Missouri state highway patrol shall provide, directly to the qualified entity, the
81 applicant's state criminal history records that are not exempt from disclosure under chapter 610
82 or are otherwise confidential under law;

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

87 (9) ~~[The determination whether the criminal history record shows that the applicant has~~
88 ~~been convicted of, or has a pending charge, for any crime that bears upon the fitness of the~~
89 ~~applicant to have responsibility for the safety and well-being of children, the elderly, or disabled~~

90 ~~persons shall be made solely by the qualified entity.]~~ This section shall not require the Missouri
91 state highway patrol to make ~~[such a]~~ **an eligibility** determination on behalf of any qualified
92 entity;

93 (10) The qualified entity shall notify the applicant, in writing, of his or her right to obtain
94 a copy of any criminal record review, including the criminal history records, if any, contained
95 in the report, and of the applicant's right to challenge the accuracy and completeness of any
96 information contained in any such report and to obtain a determination as to the validity of such
97 challenge before a final determination regarding the applicant is made by the qualified entity
98 reviewing the criminal history information. A qualified entity that is required by law to apply
99 screening criteria, including any right to contest or request an exemption from disqualification,
100 shall apply such screening criteria to the state and national criminal history record information
101 received from the Missouri state highway patrol for those applicants subject to the required
102 screening; and

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

108 3. The criminal record review shall include the submission of fingerprints to[
109 ~~——(1)]~~ the Missouri state highway patrol, who shall conduct a Missouri criminal record
110 review, including closed record information under section 610.120[~~—and~~
111 ~~——(2)]~~ . The Missouri state highway patrol shall also forward a copy of the applicant's
112 fingerprints to the Federal Bureau of Investigation for a national criminal record review.

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

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

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

- 119 (a) Name;
- 120 (b) Date of birth;
- 121 (c) Height;
- 122 (d) Weight;
- 123 (e) Eye color;
- 124 (f) Hair color;
- 125 (g) Gender;

- 126 (h) Race;
127 (i) Place of birth;
128 (j) Social Security number; and
129 (k) The applicant's photo.

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

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

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

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

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

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

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

**7 2. Fingerprint-based criminal history record checks submitted under subsection
8 1 of this section shall be forwarded to the Missouri state highway patrol to be used to
9 search the state's criminal history repository, and the fingerprints shall be forwarded to**

10 **the Federal Bureau of Investigation for a national criminal background check under**
11 **section 43.540. All applicable fees shall be paid under section 43.530.**
12 **Notwithstanding the provisions of section 610.120, all records related to any criminal**
13 **history information shall be accessible and available to the circuit court or state agency**
14 **making the request.**

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

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