

House _____ Amendment NO. _____

Offered By

AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 834, Page 1, Section A, Line 5, by inserting after said section and line the following:

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

(1) "Applicant", any individual who applies or is required to successfully complete the background check requirements for employment or presence at a licensed residential care facility, license-exempt residential care facility, or child placing agency. For the purposes of background checks conducted by the Missouri state highway patrol, the term "applicant" is further defined in section 43.540;

(2) "Contractor", a person who contracts to do work for or supply goods to a licensed residential care facility, license-exempt residential care facility, or child placing agency;

(3) "Employee", an individual who works in the service of a licensed residential care facility, license-exempt residential care facility, or child placing agency under an express or implied contract for hire, whether written or unwritten or full-time or part-time, under which the licensed residential care facility, license-exempt residential care facility, or child placing agency has the right to control, in whole or in part, the details of the individual's work performance;

(4) "Owner", an individual who holds an equity interest in a licensed residential care facility, license-exempt residential care facility, or child placing agency;

(5) "Volunteer", an individual who performs a service for or on behalf of a licensed residential care facility, license-exempt residential care facility, or child placing agency of the individual's own free will without obligation or without any expectation of a reward or compensation.

2. ~~[Officers, managers,]~~ Contractors, volunteers with access to children, and employees[, and other support staff] of licensed residential care facilities and licensed child placing agencies in accordance with sections 210.481 to 210.536; owners of such residential care facilities who will have access to the facilities; and owners of such child placing agencies who will have access to children shall submit fingerprints and any information that the department requires to complete the background checks, as specified in regulations established by the department, to the Missouri state highway patrol for the purpose of conducting state and federal fingerprint-based background checks.

~~[2.]~~ 3. ~~[Officers, managers,]~~ Contractors, volunteers with access to children, and

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employees~~[-, and other support staff]~~ of residential care facilities subject to the notification requirements under sections 210.1250 to 210.1286; any person eighteen years of age or older who resides at or on the property of such residential care facility; any person who has unsupervised contact with a resident of the residential care facility; and owners of such residential care facilities who will have access to the facilities shall submit fingerprints and any information that the department requires to complete the background checks, as specified in regulations established by the department, to the Missouri state highway patrol for the purpose of conducting state and federal fingerprint-based background checks.

~~[3.]~~ 4. A background check shall include:

(1) A state and Federal Bureau of Investigation fingerprint check; and

~~(2) [A search of the National Crime Information Center's National Sex Offender Registry;~~
and

~~(3)]~~ A search of the following registries, repositories, or databases in Missouri, the state where the applicant resides, and each state where such applicant resided during the preceding five years:

(a) The state criminal registry or repository, with the use of fingerprints being required in the state where the applicant resides and optional in other states;

(b) The state sex offender registry or repository;

(c) The state family care safety registry; and

(d) The state-based child abuse and neglect registry and database.

~~[4.]~~ 5. For the purposes of this section and notwithstanding any other provision of law, "department" means the department of social services.

~~[5.]~~ 6. The department shall be responsible for background checks as part of a residential care facility or child placing agency application for licensure, renewal of licensure, or for license monitoring.

~~[6.]~~ 7. The department shall be responsible for background checks for residential care facilities subject to the notification requirements of sections 210.1250 to 210.1286.

~~[7.]~~ 8. Fingerprint cards and any required fees shall be sent to the Missouri state highway patrol's central repository. The fingerprints shall be used for searching the state criminal records repository and shall also be forwarded to the Federal Bureau of Investigation for a federal criminal records search under section 43.540. The Missouri state highway patrol shall notify the department of any criminal history record information or lack of criminal history record information discovered on the individual. Notwithstanding the provisions of section 610.120, all records related to any criminal history information discovered shall be accessible and available to the department.

~~[8.]~~ 9. Fingerprints submitted to the Missouri state highway patrol for the purpose of conducting state and federal fingerprint-based background checks under this section shall be valid for a period of five years.

~~[9.]~~ 10. The department shall provide the results of the background check to the applicant in a statement that indicates whether the applicant is eligible or ineligible for employment or presence

at the licensed residential care facility or licensed child placing agency. The department shall not reveal to the residential care facility or the child placing agency any disqualifying offense or other related information regarding the applicant. The applicant shall have the opportunity to appeal an ineligible finding.

~~[40.]~~ 11. The department shall provide the results of the background check to the applicant in a statement that indicates whether the applicant is eligible or ineligible for employment or presence at the residential care facility subject to the notification requirements of sections 210.1250 to 210.1286. The department shall not reveal to the residential care facility any disqualifying offense or other related information regarding the applicant. The applicant shall have the opportunity to appeal an ineligible finding.

~~[44.]~~ 12. An applicant shall be ineligible if the applicant:

- (1) Refuses to consent to the background check as required by this section;
- (2) Knowingly makes a materially false statement in connection with the background check as required by this section;
- (3) Is registered, or is required to be registered, on a state sex offender registry or repository ~~[or the National Sex Offender Registry];~~
- (4) Is listed as a perpetrator of child abuse or neglect under sections 210.109 to 210.183 or any other finding of child abuse or neglect based on any other state's registry or database; or
- (5) Has pled guilty or nolo contendere to or been found guilty of:
 - (a) Any felony for an offense against the person as defined in chapter 565;
 - (b) Any other offense against the person involving the endangerment of a child as prescribed by law;
 - (c) Any misdemeanor or felony for a sexual offense as defined in chapter 566;
 - (d) Any misdemeanor or felony for an offense against the family as defined in chapter 568;
 - (e) Burglary in the first degree as defined in section 569.160;
 - (f) Any misdemeanor or felony for robbery as defined in chapter 570;
 - (g) Any misdemeanor or felony for pornography or related offense as defined in chapter 573;
 - (h) Any felony for arson as defined in chapter 569;
 - (i) Any felony for armed criminal action as defined in section 571.015, unlawful use of a weapon as defined in section 571.030, unlawful possession of a firearm as defined in section 571.070, or the unlawful possession of an explosive as defined in section 571.072;
 - (j) Any felony for making a terrorist threat as defined in section 574.115, 574.120, or 574.125;
 - (k) A felony drug-related offense committed during the preceding five years; or
 - (l) Any similar offense in any federal, state, or other court of similar jurisdiction of which the department has knowledge.

~~[42.]~~ 13. Any person aggrieved by a decision of the department shall have the right to seek an administrative review. The review shall be filed with the department within fourteen days from

the mailing of the notice of ineligibility. Any decision not timely appealed shall be final.

~~[13.]~~ 14. Any required fees shall be paid by the individual applicant, facility, or agency.

~~[14.]~~ 15. The department is authorized to promulgate rules, including emergency rules, to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after July 14, 2021, shall be invalid and void."; and

Further amend said bill, Page 12, Section 217.947, Line 9, by inserting after said section and line the following:

"435.300. As used in sections 435.300 to 435.312, the following terms mean:

(1) "Alternative dispute resolution communication", a statement, whether communicated orally, in writing, or by nonverbal conduct, that is either:

(a) Related to the subject matter of the dispute and made during an alternative dispute resolution process; or

(b) Made as part of considering, conducting, participating in, initiating, continuing, or reconvening an alternative dispute resolution process.

The term "alternative dispute resolution communication" shall not include the notifications or reports made under subsection 2 of section 435.303 or subsection 8 of section 435.306 or a written agreement as described under section 435.312;

(2) "Alternative dispute resolution process", mediation, arbitration, or early neutral evaluation used in conjunction with a pending civil action, and any other alternative to trial that has been included in a local court rule applicable to a civil dispute;

(3) "Arbitration", a procedure in which a neutral or panel of neutrals hears and decides a dispute between two or more parties;

(4) "Conflict of interest", any direct or indirect financial or personal interest in the outcome of a dispute or any existing or prior financial, business, professional, family, or social relationship with any participant in an alternative dispute resolution process that is likely to affect the impartiality of the neutral or that may reasonably create an appearance of partiality or bias;

(5) "Early neutral evaluation", a process in which a neutral provides parties to a dispute with a nonbinding assessment of their dispute;

(6) "In camera", a proceeding held in a judge's chambers or in a courtroom from which the public is excluded;

(7) "Mandated reporter", an individual who is required to report abuse or neglect under the

provisions of section 192.2405, 192.2475, 198.070, 208.912, 210.115, 352.400, 630.162, or 630.165;

(8) "Mediation", a process in which a neutral facilitates communications among the parties and assists the parties in their efforts to reach a voluntary agreement regarding the dispute;

(9) "Mediator", a neutral who conducts mediation;

(10) "Neutral", an individual who, acting independently and not as a representative, agent, or advocate of any of the parties, assists the parties in their efforts to reach a resolution of their dispute through an alternative dispute resolution process;

(11) "Participant", any person or entity, including any neutral or party, who participates in an alternative dispute resolution process;

(12) "Party", an individual or entity named as a party in a pending civil action, or in an agreement to use an alternative dispute resolution process as described under sections 435.309 and 435.312;

(13) "Person", an individual; a public or private corporation, business trust, estate, trust, partnership, limited liability company, or insurance company; an association; a joint venture; a governmental unit, subdivision, agency, or instrumentality of the state; or any other legal or commercial entity;

(14) "Proceeding", a judicial, administrative, arbitral, or other adjudicative process, including related prehearing and posthearing motions, conferences, hearings, and discovery;

(15) "Writing" or "written", a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communication;

(16) "Written agreement", a writing that:

(a) Contains the essential terms of an agreement; and

(b) Is signed, executed, or adopted by the parties by any process described under subdivision (15) of this section, including electronic signatures as permitted by section 432.230, with the intent to sign and be bound by the writing and attached to or logically associated with the writing.

435.303. 1. A court may refer any individual civil case or category of civil cases to mediation or another nonbinding alternative dispute resolution process either by rule or court order.

2. Within thirty days of referral by a court to a nonbinding alternative dispute resolution process under subsection 1 of this section, or such longer time as may be set by the court, or with leave of the court, the parties may:

(1) Notify the court that all of the parties have chosen to pursue an alternative dispute resolution process different from the nonbinding alternative dispute resolution process ordered by the court if such choice is evidenced in a written agreement between the parties;

(2) Notify the court that all of the parties have agreed to delay such process until a date certain, which date may be subsequently modified by the court, to allow for the exchange of specified information, the identification of representatives with authority, or another identified

1 action or event related to the ability of the parties to participate effectively in that process; or

2 (3) File a motion for relief from the referral setting forth the reasons for not participating if
3 any party, after conferring with all other parties, concludes that referral to a nonbinding alternative
4 dispute resolution process has no reasonable chance of helping the parties to better understand or
5 resolve one or more of the procedural or substantive issues in the matter or there is a compelling
6 circumstance for not participating in the alternative dispute resolution process. Once a motion for
7 relief has been filed, the alternative dispute resolution process ordered by the court shall not occur
8 until the court has ruled on the motion. If the court grants the motion, the matter shall not thereafter
9 be referred by the court to an alternative dispute resolution process without compelling
10 circumstances, which shall be set out by the court in any order referring the matter to an alternative
11 dispute resolution process.

12 3. In an action referred to a nonbinding alternative dispute resolution process, discovery
13 may proceed as in any other action before, during, and after the nonbinding alternative dispute
14 resolution process is held. The court may stay discovery in whole or in part during the pendency of
15 an alternative dispute resolution process in order to promote savings in time and expense without
16 sacrificing the quality of justice.

17 4. A neutral who is appointed by the court or requested by the parties to serve in a
18 nonbinding alternative dispute resolution process under sections 435.300 to 435.312 shall avoid any
19 conflict of interest. If the neutral believes that no disqualifying conflict exists, the neutral shall:

20 (1) Make a reasonable inquiry to determine whether there are any facts that would cause a
21 reasonable person to believe that the neutral has an actual or potential conflict of interest before
22 agreeing to serve in a matter;

23 (2) Disclose to the parties, as soon as practicable, facts and information relevant to any
24 actual or potential conflicts of interest that are reasonably known to the neutral; and

25 (3) If, after accepting a designation by the parties or the court, the neutral learns of any
26 previously undisclosed information that could reasonably suggest a conflict of interest, promptly
27 disclose the information to the parties.

28 5. After the neutral's disclosure of a conflict, the alternative dispute resolution process may
29 proceed if either:

30 (1) All parties agree in writing to service by the neutral; or

31 (2) An organization independently administering the alternative dispute resolution process
32 under rules of procedure that were adopted by a written agreement of the parties determines under
33 such rules that the neutral may continue to serve.

34 6. Any party who believes a court-appointed neutral has a conflict of interest may request
35 that the neutral recuse himself or herself if a conflict is disclosed or otherwise discovered. If the
36 neutral declines, the party may timely file a motion with the court for disqualification of the neutral.
37 Failure to file a motion waives that objection. On its own motion, the court may also review the
38 choice of a neutral in any alternative dispute resolution process involving a party that is not
39 represented by counsel and require a change of neutral if necessary to protect the rights of the

1 unrepresented party.

2 435.306. 1. Alternative dispute resolution communications shall not be admissible as
3 evidence in any proceeding or subject to discovery, except as otherwise provided under subsections
4 2, 3, and 7 of this section. Exceptions shall be narrowly construed and only the portion of the
5 communication necessary for the application of the exception to the general rule of nonadmissibility
6 shall be admitted.

7 2. Evidence or information that is otherwise admissible or subject to discovery, including
8 information that would be available to the public under sections 610.010 to 610.035, shall not
9 become inadmissible or protected from discovery solely by reason of its disclosure or use in an
10 alternative dispute resolution process.

11 3. A court may determine to admit an alternative dispute resolution communication upon
12 motion of a party, which motion shall not reveal the substance of the communication, and following
13 a hearing only if the court finds that one or more of the exceptions under this subsection apply and
14 the communication is otherwise relevant and admissible. The party seeking admission shall ensure
15 that timely notice is given to the neutral and parties that participated in the alternative dispute
16 resolution process in which the alternative dispute resolution communication was made. Such
17 hearing shall be conducted in camera if requested by a party or if the court determines on its own
18 motion that an in camera proceeding is necessary to ensure the confidentiality of the
19 communications that are the subject to the hearing. The only exceptions to the general rule of
20 nonadmissibility of alternative dispute resolution communications stated under subsection 1 of this
21 section are as follows:

22 (1) The alternative dispute resolution communication was made in the presence of a
23 mandated reporter and pertains to abuse or neglect that such person is required by state law or
24 regulation to report;

25 (2) The alternative dispute resolution communication is a substantial threat or statement of a
26 plan to inflict bodily injury capable of causing death or substantial bodily harm that is reasonably
27 certain to occur;

28 (3) The alternative dispute resolution communication is intentionally used to plan a crime,
29 attempt to commit an offense, or to conceal an ongoing crime or ongoing criminal activity; or

30 (4) The alternative dispute resolution communication is necessary to establish or defend
31 against a claim of professional misconduct or malpractice that is filed against or on behalf of a
32 participant based on conduct occurring during the alternative dispute resolution process.

33 4. The admission of evidence in a proceeding under any of the exceptions stated under
34 subsection 3 of this section shall not in itself render the evidence or any other alternative dispute
35 resolution communication discoverable or admissible for any other purpose or proceeding.

36 5. Any participant in an alternative dispute resolution process has standing to intervene in
37 any proceeding to object to the admissibility of an alternative dispute resolution communication
38 made by that person during or relating to that alternative dispute resolution process. A neutral who
39 participated in an alternative dispute resolution process also has standing to intervene in any

1 proceeding to object to the admissibility of an alternative dispute resolution communication made
2 by the neutral or an agent or employee of a neutral or of an organization through which the neutral
3 provided the alternative dispute resolution services for such process, but the neutral is under no
4 requirement to do so.

5 6. Except as provided under subsection 7 of this section, no neutral, agent or employee of
6 that neutral, or agent or employee of an organization through which the neutral provided alternative
7 dispute resolution services shall be subpoenaed or otherwise compelled to disclose any alternative
8 dispute resolution communication, including any alternative dispute resolution communication that
9 would otherwise fall within the exceptions identified under subsection 3 of this section. No neutral
10 who is a licensed attorney, nor an agent or employee of such neutral or of an organization through
11 which the neutral provided alternative dispute resolution services under sections 435.300 to
12 435.312, shall be required to disclose any alternative dispute resolution communication to which a
13 reporting obligation might otherwise apply under the rules regulating the professional conduct of
14 attorneys.

15 7. A neutral, an agent or employee of that neutral, or an agent or employee of an
16 organization through which the neutral provided the alternative dispute resolution services may be
17 subpoenaed in an action to enforce a written agreement as described under subsection 2 of section
18 435.309, but only for the limited purpose of testifying that the written agreement was signed by the
19 parties in the presence of the neutral.

20 8. The court may request that the neutral or the parties provide the court with progress
21 reports on alternative dispute resolution processes related to pending civil actions; provided that,
22 such reports shall be limited to a statement that the matter has been resolved in its entirety, partially
23 resolved, or not resolved and whether future dates for an alternative dispute resolution process are
24 scheduled. A neutral may also report to the court that a payment has not been received from one or
25 more parties. A court shall not require the disclosure of alternative dispute resolution
26 communication in any such report.

27 9. The court may order the party or parties seeking admission of an alternative dispute
28 resolution communication to pay the costs and fees of the neutral or other person participating in an
29 alternative dispute resolution process who intervenes to contest the disclosure and admission of
30 alternative dispute resolution communication or who responds to a subpoena prohibited under
31 subsection 6 of this section or a subpoena under subsection 7 of this section.

32 435.309. 1. Unless the parties have entered into a written agreement providing for entry
33 into a binding alternative dispute resolution process, all alternative dispute resolution processes
34 under sections 435.300 to 435.312 shall be nonbinding.

35 2. In order to be binding on the parties, a settlement agreement that is reached in an
36 alternative dispute resolution process shall be in a written agreement.

37 3. Alternative dispute resolution processes included in consumer contracts for goods or
38 services shall be independently administered.

39 435.312. 1. Except as provided under subsection 6 of this section, sections 435.300 to

1 435.312 shall apply only when the court has referred an individual civil case or category of cases to
 2 a nonbinding alternative dispute resolution process, either by rule or court order, or when the parties
 3 enter into a written agreement to resolve their dispute through a nonbinding alternative dispute
 4 resolution process expressly providing that sections 435.300 to 435.312 shall apply to such
 5 alternative dispute resolution process.

6 2. The parties to a dispute may enter into a written agreement to attempt to resolve their
 7 differences through an alternative dispute resolution process and may agree that sections 435.300 to
 8 435.312 will apply to such alternative dispute resolution process prior to the filing of an action or
 9 after the entry of a judgment, as well as during the pendency of an action. If the matter resolves and
 10 the parties file a case to present the settlement for approval by the court, such case shall be
 11 exempted from any local rule that refers a class of cases to any alternative dispute resolution
 12 process.

13 3. Nothing in sections 435.300 to 435.312 shall preclude any court from referring any
 14 individual matter to a nonbinding alternative dispute resolution process so as to effectuate the
 15 timely, fair, and efficient administration of justice, subject only to subsection 2 of section 435.303.

16 4. Nothing in sections 435.300 to 435.312 is intended to undermine the right of litigants to a
 17 jury trial in the event that a resolution satisfactory to the parties is not achieved through a
 18 nonbinding alternative dispute resolution process.

19 5. Nothing in sections 435.300 to 435.312 shall be deemed to require:

20 (1) Any party or party representative who appears at an alternative dispute resolution
 21 process in compliance with a court order to settle all or part of any claim; or

22 (2) Any party to attend a mediation with counsel if such party is self-represented.

23 6. If the court has not referred a case to a nonbinding dispute resolution process pursuant to
 24 section 435.303 and if the parties do not elect to use sections 435.300 to 435.312, the process shall
 25 be regarded as settlement negotiations and subject to the rules of confidentiality that generally apply
 26 to such negotiations. If the parties to the dispute have agreed in writing to submit their dispute to
 27 that alternative dispute resolution process but have not invoked the protections of sections 435.300
 28 to 435.312, no person who serves as a neutral in such process, nor any agent or employee of that
 29 person or of an organization through which the neutral provided the alternative dispute resolution
 30 process, shall be subpoenaed or otherwise compelled to disclose any matter revealed in the process
 31 of setting up or conducting such alternative dispute resolution process. All settlement agreements
 32 are required to be in writing as described under sections 435.300 to 435.312."; and

33
 34 Further amend said bill, Page 18, Section 559.115, Line 77, by inserting after said section and line
 35 the following:

36
 37 "575.205. 1. A person commits the offense of tampering with electronic monitoring
 38 equipment if he or she intentionally removes, alters, tampers with, damages, [œ] destroys, fails to
 39 charge, or otherwise disables electronic monitoring equipment which a court, the division of
 40 probation and parole or the parole board has required such person to wear.

41 2. This section does not apply to the owner of the equipment or an agent of the owner who
 42 is performing ordinary maintenance or repairs on the equipment.

1 3. The offense of tampering with electronic monitoring equipment is a class D felony.

2 4. The offense of tampering with electronic monitoring equipment if a person fails to charge
3 or otherwise disables electronic monitoring equipment is a class E felony, unless the offense for
4 which the person was placed on electronic monitoring was a misdemeanor, in which case it is a class
5 A misdemeanor."; and
6

7 Further amend said bill, Page 21, Section 217.810, Line 89, by inserting after said section and line
8 the following:

9 "~~[435.014. 1. If all the parties to a dispute agree in writing to submit their~~
10 ~~dispute to any forum for arbitration, conciliation or mediation, then no person who~~
11 ~~serves as arbitrator, conciliator or mediator, nor any agent or employee of that~~
12 ~~person, shall be subpoenaed or otherwise compelled to disclose any matter~~
13 ~~disclosed in the process of setting up or conducting the arbitration, conciliation or~~
14 ~~mediation.~~

15 ~~2. Arbitration, conciliation and mediation proceedings shall be regarded as~~
16 ~~settlement negotiations. Any communication relating to the subject matter of such~~
17 ~~disputes made during the resolution process by any participant, mediator,~~
18 ~~conciliator, arbitrator or any other person present at the dispute resolution shall be~~
19 ~~a confidential communication. No admission, representation, statement or other~~
20 ~~confidential communication made in setting up or conducting such proceedings~~
21 ~~not otherwise discoverable or obtainable shall be admissible as evidence or subject~~
22 ~~to discovery.]"; and~~

23
24 Further amend said bill by amending the title, enacting clause, and intersectional references
25 accordingly.