

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill No. 766, Page 1, Section A, Line 2, by
2 inserting after said section and line the following:

3
4 "43.539. 1. As used in this section, the following terms mean:

5 (1) "Applicant", a person who:

6 (a) Is actively employed by or seeks employment with a qualified entity;

7 (b) Is actively licensed or seeks licensure with a qualified entity;

8 (c) Actively volunteers or seeks to volunteer with a qualified entity;

9 (d) Is actively contracted with or seeks to contract with a qualified entity; or

10 (e) Owns or operates a qualified entity;

11 (2) "Care", the provision of care, treatment, education, training, instruction, supervision, or
12 recreation to children, the elderly, or disabled persons;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (a) Name;

36 (b) Date of birth;

37 (c) Height;

38 (d) Weight;

39 (e) Eye color;

- 1 (f) Hair color;
- 2 (g) Gender;
- 3 (h) Race;
- 4 (i) Place of birth;
- 5 (j) Social Security number; and
- 6 (k) The applicant's photo.

7 5. Any information received by an authorized state agency or a qualified entity under the
8 provisions of this section shall be used solely for internal purposes in determining the suitability of
9 an applicant. The dissemination of criminal history information from the Federal Bureau of
10 Investigation beyond the authorized state agency or related governmental entity is prohibited. All
11 criminal record check information shall be confidential, and any person who discloses the
12 information beyond the scope allowed is guilty of a class A misdemeanor.

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

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

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

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

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

29 43.540. 1. As used in this section, the following terms mean:

30 (1) "Applicant", a person who:

31 (a) Is actively employed by or seeks employment with a qualified entity;

32 (b) Is actively licensed or seeks licensure with a qualified entity;

33 (c) Actively volunteers or seeks to volunteer with a qualified entity; or

34 (d) Is actively contracted with or seeks to contract with a qualified entity;

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

38 (3) "Missouri Rap Back program", shall include any type of automatic notification made by
39 the Missouri state highway patrol to a qualified entity indicating that an applicant who is employed,

1 licensed, or otherwise under the purview of that entity has been arrested for a reported criminal
2 offense in Missouri as required under section 43.506;

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

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

10 (6) "Qualified entity", an entity that is:

11 (a) An office or division of state, county, or municipal government, including a political
12 subdivision or a board or commission designated by statute or approved local ordinance, to issue or
13 renew a license, permit, certification, or registration of authority;

14 (b) An office or division of state, county, or municipal government, including a political
15 subdivision or a board or commission designated by statute or approved local ordinance, to make
16 fitness determinations on applications for state, county, or municipal government employment; or

17 (c) Any entity that is authorized to obtain criminal history record information under 28 CFR
18 20.33.

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

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

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

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

37 (4) The criminal record review and Rap Back process described in this section shall be
38 voluntary and conform to the requirements established in Pub. L. 92-544 and other applicable state
39 or federal law. As a part of the registration, the qualified entity shall agree to comply with state and

1 federal law and shall indicate so by signing an agreement approved by the Missouri state highway
2 patrol. The Missouri state highway patrol may periodically audit qualified entities to ensure
3 compliance with federal law and this section;

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

6 (6) Each request shall be accompanied by a reasonable fee, as provided in section 43.530,
7 plus the amount required, if any, by the Federal Bureau of Investigation for the national criminal
8 record review and enrollment in the National Rap Back program in compliance with applicable state
9 or federal laws;

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

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

17 (9) This section shall not require the Missouri state highway patrol to make an eligibility
18 determination on behalf of any qualified entity;

19 (10) The qualified entity shall notify the applicant, in writing, of his or her right to obtain a
20 copy of any criminal record review, including the criminal history records, if any, contained in the
21 report, and of the applicant's right to challenge the accuracy and completeness of any information
22 contained in any such report and to obtain a determination as to the validity of such challenge before
23 a final determination regarding the applicant is made by the qualified entity reviewing the criminal
24 history information. A qualified entity that is required by law to apply screening criteria, including
25 any right to contest or request an exemption from disqualification, shall apply such screening
26 criteria to the state and national criminal history record information received from the Missouri state
27 highway patrol for those applicants subject to the required screening; and

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

33 3. The criminal record review shall include the submission of fingerprints to the Missouri
34 state highway patrol, who shall conduct a Missouri criminal record review, including closed record
35 information under section 610.120. The Missouri state highway patrol shall also forward a copy of
36 the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal record
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38 4. The applicant subject to a criminal record review shall provide the following information
39 to the qualified entity:

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2 participate in the Missouri and National Rap Back programs;

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

5 (a) Name;

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7 (c) Height;

8 (d) Weight;

9 (e) Eye color;

10 (f) Hair color;

11 (g) Gender;

12 (h) Race;

13 (i) Place of birth;

14 (j) Social Security number; and

15 (k) The applicant's photo.

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

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

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

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

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

36 7. The highway patrol shall make available or approve the necessary forms, procedures, and
37 agreements necessary to implement the provisions of this section."; and

38
39 Further amend said bill by amending the title, enacting clause, and intersectional references
40 accordingly.