

FIRST REGULAR SESSION

HOUSE BILL NO. 708

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GRISAMORE.

1054L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof one new section relating to the mental health employee disqualification list, with a penalty provision.

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

Section A. Section 630.170, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 630.170, to read as follows:

630.170. 1. A person who is listed on the department of mental health disqualification registry pursuant to this section, who is listed on the department of social services or the department of health and senior services employee disqualification list pursuant to section 660.315, or who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to any crime pursuant to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility, day program, residential facility, or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632.

2. A person who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to **any felony offense as defined in chapter 195**, any felony offense against persons as defined in chapter 565; any felony sexual offense as defined in chapter 566; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, **568.175**, 569.020, 569.025, 569.030, 569.035, 569.040, 569.050, 569.070, [or] 569.160, **570.030, 570.040, 570.090, 570.145, 570.223, 570.230, or 576.080**, or of an equivalent felony offense **in another state**, or who has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo contendere to any violation

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.

18 of subsection 3 of section 198.070, **or who has been found guilty of or pleaded guilty or nolo**
19 **contendere to a violation of section 577.010 or 577.012 and who is alleged and found by the**
20 **court to be an aggravated or chronic offender under section 577.023**, or has been [convicted]
21 **found guilty** of or [pled] **pleaded** guilty or nolo contendere to any offense requiring registration
22 under section 589.400, shall be disqualified from holding any direct-care position in any public
23 or private facility, day program, residential facility or specialized service operated, licensed,
24 certified, accredited, in possession of deemed status, or funded by the department or any mental
25 health facility or mental health program in which people are admitted on a voluntary basis or are
26 civilly detained pursuant to chapter 632.

27 3. A person who has received a suspended imposition of sentence or a suspended
28 execution of sentence following a plea of guilty to any of the disqualifying crimes listed in
29 subsection 1 or 2 of this section shall remain disqualified.

30 4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section
31 may seek an exception to the disqualification from the director of the department or the director's
32 designee, **especially if the person is in recovery and the disqualifying felony offense was**
33 **alcohol or drug related**. The request shall be written and may not be made more than once
34 every six months. The request may be granted by the director or designee if in the judgment of
35 the director or designee a clear showing has been made by written submission only, that the
36 person will not commit any additional acts for which the person had originally been disqualified
37 for or any other acts that would be harmful to a patient, resident or client of a facility, program
38 or service. The director or designee may grant an exception subject to any conditions deemed
39 appropriate and failure to comply with such terms may result in the person again being
40 disqualified. Any person placed on the disqualification registry prior to August 28, 2012, may
41 be removed from the registry by the director or designee if in the judgment of the director or
42 designee a clear showing has been made, by written submission only, that the person will not
43 commit any additional acts for which the person had originally been disqualified for or any other
44 acts that would be harmful to a patient, resident, or client of a facility, program, or service.
45 Decisions by the director or designee pursuant to the provisions of this subsection shall not be
46 subject to appeal. The right to request an exception pursuant to this subsection shall not apply
47 to persons who are disqualified due to being listed on the department of social services or
48 department of health and senior services employee disqualification list pursuant to section
49 660.315, nor to persons disqualified from employment due to any crime pursuant to the
50 provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070.

51 5. An applicant for a position in any public or private facility, day program, residential
52 facility, or specialized service operated, licensed, certified, accredited, in possession of deemed
53 status, or funded by the department or any mental health facility or mental health program in

54 which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632
55 shall:

56 (1) Sign a consent form [as] required [by] **under** section 43.540 to provide written
57 consent for a criminal record review;

58 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
59 "criminal history" includes any suspended imposition of sentence, any suspended execution of
60 sentence, or any period of probation or parole; and

61 (3) Disclose if the applicant is listed on the employee disqualification list as provided
62 in section 660.315, or the department of mental health disqualification registry as provided for
63 in this section.

64 6. Any person who has received a good cause waiver issued by the department of health
65 and senior services or its predecessor under subsection [9] **10** of section 660.317 shall not require
66 an additional exception under this section in order to be employed in a long-term care facility
67 licensed under chapter 198.

68 7. Any public or private residential facility, day program, or specialized service operated,
69 licensed, certified, accredited, in possession of deemed status, or funded by the department or
70 any mental health facility or mental health program in which people are admitted on a voluntary
71 basis or are civilly detained pursuant to chapter 632 shall, not later than two working days after
72 hiring any person for a full-time, part-time, or temporary position that will have contact with
73 clients, residents, or patients:

74 (1) Request a criminal background check as provided in section 43.540;

75 (2) Make an inquiry to the department of social services and department of health and
76 senior services to determine whether the person is listed on the employee disqualification list as
77 provided in section 660.315; and

78 (3) Make an inquiry to the department of mental health to determine whether the person
79 is listed on the disqualification registry as provided in this section.

80 8. An applicant who knowingly fails to disclose his or her criminal history as required
81 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
82 A misdemeanor if the provider hires a person to hold a direct-care position knowing that such
83 person has been disqualified pursuant to the provisions of subsection 2 of this section. A
84 provider is guilty of a class A misdemeanor if the provider hires a person to hold any position
85 knowing that such person has been disqualified pursuant to the provisions of subsection 1 of this
86 section.

87 9. Any public or private residential facility, day program, or specialized service operated,
88 licensed, certified, accredited, in possession of deemed status or funded by the department or any
89 mental health facility or mental health program in which people are admitted on a voluntary basis

90 or are civilly detained pursuant to chapter 632 that declines to employ or discharges a person
91 who is disqualified pursuant to the provisions of subsection 1 or 2 of this section shall be
92 immune from suit by that person or anyone else acting for or in behalf of that person for the
93 failure to employ or for the discharge of the person due to disqualification.

94 10. Any employer who is required to discharge an employee because the employee was
95 placed on a disqualification registry maintained by the department of mental health after the date
96 of hire shall not be charged for unemployment insurance benefits based on wages paid to the
97 employee for work prior to the date of discharge pursuant to section 288.100.

98 11. The department shall maintain a disqualification registry and place on the registry
99 the names of any persons who have been finally determined by the department to be disqualified
100 based upon administrative substantiations made against them for abuse or neglect pursuant to
101 department rule or regulation. Such list shall reflect that the person is barred from holding any
102 position in any public or private facility, day program, residential facility, or specialized service
103 operated, licensed, certified, accredited, in possession of deemed status, or funded by the
104 department, or any mental health facility or mental health program in which persons are admitted
105 on a voluntary basis or are civilly detained pursuant to chapter 632. The length of time the
106 person's name shall appear on the disqualification registry shall be determined by the director or
107 the director's designee, based upon the criteria contained in subsection 13 of this section.

108 12. Persons notified that their name will be placed on the disqualification registry may
109 appeal such determination pursuant to department rule or regulation. If the person appeals, the
110 hearing tribunal shall not modify the length of time the person's name shall appear on the
111 disqualification registry if the hearing tribunal upholds all of the administrative substantiations
112 made by the director or the director's designee. If the hearing tribunal overturns part of the
113 administrative substantiations made by the director or the director's designee, the hearing tribunal
114 may consider modifying the length of time the person's name shall appear on the disqualification
115 registry based upon testimony and evidence received during the hearing.

116 13. The length of time the person's name shall appear on the disqualification registry
117 shall be determined by the director or the director's designee based upon the following:

- 118 (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;
- 119 (2) The degree of actual or potential injury or harm to the patient, resident, or client;
- 120 (3) The degree of actual or potential danger to the health, safety, or welfare of the patient,
121 resident, or client;
- 122 (4) The degree of misappropriation or conversion of patient, resident, or client funds or
123 property;
- 124 (5) Whether the person has previously been listed on the department's disqualification
125 registry;

126 (6) Any mitigating circumstances; and

127 (7) Any aggravating circumstances.

128 14. The department shall provide the disqualification registry maintained pursuant to this
129 section to other state and federal agencies upon request. The department may provide the
130 disqualification registry maintained pursuant to this section to any public or private facility, day
131 program, residential facility, or specialized service operated, licensed, certified, accredited, in
132 possession of deemed status, or funded by the department or to any mental health facility or
133 mental health program in which people are admitted on a voluntary or involuntary basis or are
134 civilly detained pursuant to chapter 632. The department may also provide the disqualification
135 registry to a recognized school of nursing, medicine, or other health profession for the purpose
136 of determining whether students scheduled to participate in clinical rotations are included in the
137 employee disqualification registry.

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