

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 380,
2 Page 9, Section 192.926, Line 47, by inserting the following after all of said line:

3
4 "192.2490. 1. After an investigation and a determination has been made to place a person's
5 name on the employee disqualification list, that person shall be notified in writing mailed to his or
6 her last known address that:

7 (1) An allegation has been made against the person, the substance of the allegation and that
8 an investigation has been conducted which tends to substantiate the allegation;

9 (2) The person's name will be included in the employee disqualification list of the
10 department;

11 (3) The consequences of being so listed including the length of time to be listed; and

12 (4) The person's rights and the procedure to challenge the allegation.

13 2. If no reply has been received within thirty days of mailing the notice, the department may
14 include the name of such person on its list. The length of time the person's name shall appear on the
15 employee disqualification list shall be determined by the director or the director's designee, based
16 upon the criteria contained in subsection 9 of this section.

17 3. If the person so notified wishes to challenge the allegation, such person may file an
18 application for a hearing with the department. The department shall grant the application within
19 thirty days after receipt by the department and set the matter for hearing, or the department shall
20 notify the applicant that, after review, the allegation has been held to be unfounded and the
21 applicant's name will not be listed.

22 4. If a person's name is included on the employee disqualification list without the department
23 providing notice as required under subsection 1 of this section, such person may file a request with
24 the department for removal of the name or for a hearing. Within thirty days after receipt of the
25 request, the department shall either remove the name from the list or grant a hearing and set a date
26 therefor.

27 5. Any hearing shall be conducted in the county of the person's residence by the director of
28 the department or the director's designee. The provisions of chapter 536 for a contested case except
29 those provisions or amendments which are in conflict with this section shall apply to and govern the
30 proceedings contained in this section and the rights and duties of the parties involved. The person
31 appealing such an action shall be entitled to present evidence, pursuant to the provisions of chapter
32 536, relevant to the allegations.

33 6. Upon the record made at the hearing, the director of the department or the director's
34 designee shall determine all questions presented and shall determine whether the person shall be
35 listed on the employee disqualification list. The director of the department or the director's designee
36 shall clearly state the reasons for his or her decision and shall include a statement of findings of fact

Action Taken _____ Date _____

Action Taken _____ Date _____

1 and conclusions of law pertinent to the questions in issue.

2 7. A person aggrieved by the decision following the hearing shall be informed of his or her
3 right to seek judicial review as provided under chapter 536. If the person fails to appeal the
4 director's findings, those findings shall constitute a final determination that the person shall be placed
5 on the employee disqualification list.

6 8. A decision by the director shall be inadmissible in any civil action brought against a
7 facility or the in-home services provider agency and arising out of the facts and circumstances which
8 brought about the employment disqualification proceeding, unless the civil action is brought against
9 the facility or the in-home services provider agency by the department of health and senior services
10 or one of its divisions.

11 9. The length of time the person's name shall appear on the employee disqualification list
12 shall be determined by the director of the department of health and senior services or the director's
13 designee, based upon the following:

14 (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;

15 (2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the
16 imminent danger to the health, safety or welfare of a resident or in-home services client;

17 (3) The degree of misappropriation of the property or funds, or falsification of any
18 documents for service delivery of an in-home services client;

19 (4) Whether the person has previously been listed on the employee disqualification list;

20 (5) Any mitigating circumstances;

21 (6) Any aggravating circumstances; and

22 (7) Whether alternative sanctions resulting in conditions of continued employment are
23 appropriate in lieu of placing a person's name on the employee disqualification list. Such conditions
24 of employment may include, but are not limited to, additional training and employee counseling.
25 Conditional employment shall terminate upon the expiration of the designated length of time and the
26 person's submitting documentation which fulfills the department of health and senior services'
27 requirements.

28 10. The removal of any person's name from the list under this section shall not prevent the
29 director from keeping records of all acts finally determined to have occurred under this section.

30 11. The department shall provide the list maintained pursuant to this section to other state
31 departments upon request and to any person, corporation, organization, or association who:

32 (1) Is licensed as an operator under chapter 198;

33 (2) Provides in-home services under contract with the department of social services or its
34 divisions;

35 (3) Employs nurses and nursing assistants for temporary or intermittent placement in health
36 care facilities;

37 (4) Is approved by the department to issue certificates for nursing assistants training;

38 (5) Is an entity licensed under chapter 197;

39 (6) Is a recognized school of nursing, medicine, or other health profession for the purpose of
40 determining whether students scheduled to participate in clinical rotations with entities described in
41 subdivision (1), (2), or (5) of this subsection are included in the employee disqualification list; or

42 (7) Is a consumer reporting agency regulated by the federal Fair Credit Reporting Act that
43 conducts employee background checks on behalf of entities listed in [subdivisions (1), (2), (5), or (6)
44 of] this subsection. Such a consumer reporting agency shall conduct the employee disqualification
45 list check only upon the initiative or request of an entity described in [subdivisions (1), (2), (5), or
46 (6) of] this subsection when the entity is fulfilling its duties required under this section. The
47 information shall be disclosed only to the requesting entity. The department shall inform any person
48 listed above who inquires of the department whether or not a particular name is on the list. The

1 department may require that the request be made in writing. No person, corporation, organization,
 2 or association who is entitled to access the employee disqualification list may disclose the
 3 information to any person, corporation, organization, or association who is not entitled to access the
 4 list. Any person, corporation, organization, or association who is entitled to access the employee
 5 disqualification list who discloses the information to any person, corporation, organization, or
 6 association who is not entitled to access the list shall be guilty of an infraction.

7 12. No person, corporation, organization, or association who received the employee
 8 disqualification list under subdivisions (1) to (7) of subsection 11 of this section shall knowingly
 9 employ any person who is on the employee disqualification list. Any person, corporation,
 10 organization, or association who received the employee disqualification list under subdivisions (1) to
 11 (7) of subsection 11 of this section, or any person responsible for providing health care service, who
 12 declines to employ or terminates a person whose name is listed in this section shall be immune from
 13 suit by that person or anyone else acting for or in behalf of that person for the failure to employ or
 14 for the termination of the person whose name is listed on the employee disqualification list.

15 13. Any employer or vendor as defined in sections 197.250, 197.400, 198.006, 208.900, or
 16 192.2400 required to deny employment to an applicant or to discharge an employee, provisional or
 17 otherwise, as a result of information obtained through any portion of the background screening and
 18 employment eligibility determination process under section 210.903, or subsequent, periodic
 19 screenings, shall not be liable in any action brought by the applicant or employee relating to
 20 discharge where the employer is required by law to terminate the employee, provisional or
 21 otherwise, and shall not be charged for unemployment insurance benefits based on wages paid to the
 22 employee for work prior to the date of discharge, pursuant to section 288.100, if the employer
 23 terminated the employee because the employee:

24 (1) Has been found guilty, pled guilty or nolo contendere in this state or any other state of a
 25 crime as listed in subsection 6 of section 192.2495;

26 (2) Was placed on the employee disqualification list under this section after the date of hire;

27 (3) Was placed on the employee disqualification registry maintained by the department of
 28 mental health after the date of hire;

29 (4) Has a disqualifying finding under this section, section 192.2495, or is on any of the
 30 background check lists in the family care safety registry under sections 210.900 to 210.936; or

31 (5) Was denied a good cause waiver as provided for in subsection 10 of section 192.2495.

32 14. Any person who has been listed on the employee disqualification list may request that
 33 the director remove his or her name from the employee disqualification list. The request shall be
 34 written and may not be made more than once every twelve months. The request will be granted by
 35 the director upon a clear showing, by written submission only, that the person will not commit
 36 additional acts of abuse, neglect, misappropriation of the property or funds, or the falsification of any
 37 documents of service delivery to an in-home services client. The director may make conditional the
 38 removal of a person's name from the list on any terms that the director deems appropriate, and failure
 39 to comply with such terms may result in the person's name being relisted. The director's
 40 determination of whether to remove the person's name from the list is not subject to appeal.

41 *192.2495. 1. For the purposes of this section, the term "provider" means any person,
 42 corporation or association who:

43 (1) Is licensed as an operator pursuant to chapter 198;

44 (2) Provides in-home services under contract with the department of social services or its
 45 divisions;

46 (3) Employs nurses or nursing assistants for temporary or intermittent placement in health
 47 care facilities;

48 (4) Is an entity licensed pursuant to chapter 197;

1 (5) Is a public or private facility, day program, residential facility or specialized service
2 operated, funded or licensed by the department of mental health; or

3 (6) Is a licensed adult day care provider.

4 2. For the purpose of this section "patient or resident" has the same meaning as such term is
5 defined in section 43.540.

6 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary
7 position to have contact with any patient or resident the provider shall, or in the case of temporary
8 employees hired through or contracted for an employment agency, the employment agency shall
9 prior to sending a temporary employee to a provider:

10 (1) Request a criminal background check as provided in section 43.540. Completion of an
11 inquiry to the highway patrol for criminal records that are available for disclosure to a provider for
12 the purpose of conducting an employee criminal records background check shall be deemed to fulfill
13 the provider's duty to conduct employee criminal background checks pursuant to this section; except
14 that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider
15 from further inquiry pursuant to common law requirements governing due diligence. If an applicant
16 has not resided in this state for five consecutive years prior to the date of his or her application for
17 employment, the provider shall request a nationwide check for the purpose of determining if the
18 applicant has a prior criminal history in other states. The fingerprint cards and any required fees
19 shall be sent to the highway patrol's central repository. The first set of fingerprints shall be used for
20 searching the state repository of criminal history information. If no identification is made, the
21 second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification
22 Division, for the searching of the federal criminal history files. The patrol shall notify the submitting
23 state agency of any criminal history information or lack of criminal history information discovered
24 on the individual. The provisions relating to applicants for employment who have not resided in this
25 state for five consecutive years shall apply only to persons who have no employment history with a
26 licensed Missouri facility during that five-year period. Notwithstanding the provisions of section
27 610.120, all records related to any criminal history information discovered shall be accessible and
28 available to the provider making the record request; and

29 (2) Make an inquiry to the department of health and senior services whether the person is
30 listed on the employee disqualification list as provided in section 192.2490.

31 4. When the provider requests a criminal background check pursuant to section 43.540, the
32 requesting entity may require that the applicant reimburse the provider for the cost of such record
33 check. When a provider requests a nationwide criminal background check pursuant to subdivision
34 (1) of subsection 3 of this section, the total cost to the provider of any background check required
35 pursuant to this section shall not exceed five dollars which shall be paid to the state. State funding
36 and the obligation of a provider to obtain a nationwide criminal background check shall be subject to
37 the availability of appropriations.

38 5. An applicant for a position to have contact with patients or residents of a provider shall:

39 (1) Sign a consent form as required by section 43.540 so the provider may request a criminal
40 records review;

41 (2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal
42 history" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall
43 include any suspended imposition of sentence, any suspended execution of sentence or any period of
44 probation or parole; [and]

45 (3) Disclose if the applicant is listed on the employee disqualification list as provided in
46 section 192.2490; and

47 (4) If requested by the provider, register for the family care safety registry established under
48 section 210.903. A provider may deny employment to an individual listed on any of the background

1 checks in such registry.

2 6. An applicant who knowingly fails to disclose his or her criminal history as required in
3 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A
4 misdemeanor if the provider knowingly hires or retains a person to have contact with patients or
5 residents and the person has been found guilty in this state or any other state or has been found guilty
6 of a crime, which if committed in Missouri would be a class A or B felony violation of chapter 565,
7 566 or 569, or any violation of subsection 3 of section 198.070 or section 568.020.

8 7. Any in-home services provider agency or home health agency shall be guilty of a class A
9 misdemeanor if such agency knowingly employs a person to provide in-home services or home
10 health services to any in-home services client or home health patient and such person either refuses
11 to register with the family care safety registry or is listed on any of the background check lists in the
12 family care safety registry pursuant to sections 210.900 to 210.937.

13 8. The highway patrol shall examine whether protocols can be developed to allow a provider
14 to request a statewide fingerprint criminal records review check through local law enforcement
15 agencies.

16 9. A provider may use a private investigatory agency rather than the highway patrol to do a
17 criminal history records review check, and alternatively, the applicant pays the private investigatory
18 agency such fees as the provider and such agency shall agree.

19 10. Except for the hiring restriction based on the department of health and senior services
20 employee disqualification list established pursuant to section 192.2490, the department of health and
21 senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this
22 section for good cause. For purposes of this section, "good cause" means the department has made a
23 determination by examining the employee's prior work history and other relevant factors that such
24 employee does not present a risk to the health or safety of residents.

25 *192.2495. 1. For the purposes of this section, the term "provider" means any person,
26 corporation or association who:

27 (1) Is licensed as an operator pursuant to chapter 198;

28 (2) Provides in-home services under contract with the department of social services or its
29 divisions;

30 (3) Employs nurses or nursing assistants for temporary or intermittent placement in health
31 care facilities;

32 (4) Is an entity licensed pursuant to chapter 197;

33 (5) Is a public or private facility, day program, residential facility or specialized service
34 operated, funded or licensed by the department of mental health; or

35 (6) Is a licensed adult day care provider.

36 2. For the purpose of this section "patient or resident" has the same meaning as such term is
37 defined in section 43.540.

38 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary
39 position to have contact with any patient or resident the provider shall, or in the case of temporary
40 employees hired through or contracted for an employment agency, the employment agency shall
41 prior to sending a temporary employee to a provider:

42 (1) Request a criminal background check as provided in section 43.540. Completion of an
43 inquiry to the highway patrol for criminal records that are available for disclosure to a provider for
44 the purpose of conducting an employee criminal records background check shall be deemed to fulfill
45 the provider's duty to conduct employee criminal background checks pursuant to this section; except
46 that, completing the inquiries pursuant to this subsection shall not be construed to exempt a provider
47 from further inquiry pursuant to common law requirements governing due diligence. If an applicant
48 has not resided in this state for five consecutive years prior to the date of his or her application for

1 employment, the provider shall request a nationwide check for the purpose of determining if the
2 applicant has a prior criminal history in other states. The fingerprint cards and any required fees
3 shall be sent to the highway patrol's central repository. The first set of fingerprints shall be used for
4 searching the state repository of criminal history information. If no identification is made, the
5 second set of fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification
6 Division, for the searching of the federal criminal history files. The patrol shall notify the submitting
7 state agency of any criminal history information or lack of criminal history information discovered
8 on the individual. The provisions relating to applicants for employment who have not resided in this
9 state for five consecutive years shall apply only to persons who have no employment history with a
10 licensed Missouri facility during that five-year period. Notwithstanding the provisions of section
11 610.120, all records related to any criminal history information discovered shall be accessible and
12 available to the provider making the record request; and

13 (2) Make an inquiry to the department of health and senior services whether the person is
14 listed on the employee disqualification list as provided in section 192.2490.

15 4. When the provider requests a criminal background check pursuant to section 43.540, the
16 requesting entity may require that the applicant reimburse the provider for the cost of such record
17 check. When a provider requests a nationwide criminal background check pursuant to subdivision
18 (1) of subsection 3 of this section, the total cost to the provider of any background check required
19 pursuant to this section shall not exceed five dollars which shall be paid to the state. State funding
20 and the obligation of a provider to obtain a nationwide criminal background check shall be subject to
21 the availability of appropriations.

22 5. An applicant for a position to have contact with patients or residents of a provider shall:

23 (1) Sign a consent form as required by section 43.540 so the provider may request a criminal
24 records review;

25 (2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal
26 history" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall
27 include any suspended imposition of sentence, any suspended execution of sentence or any period of
28 probation or parole; [and]

29 (3) Disclose if the applicant is listed on the employee disqualification list as provided in
30 section 192.2490; and

31 (4) If requested by the provider, register for the family care safety registry established under
32 section 210.903. A provider may deny employment to an individual listed on any of the background
33 checks in such registry.

34 6. An applicant who knowingly fails to disclose his or her criminal history as required in
35 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class A
36 misdemeanor if the provider knowingly hires or retains a person to have contact with patients or
37 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or any
38 other state or has been found guilty of a crime, which if committed in Missouri would be a class A or
39 B felony violation of chapter 565, 566 or 569, or any violation of subsection 3 of section 198.070 or
40 section 568.020.

41 7. Any in-home services provider agency or home health agency shall be guilty of a class A
42 misdemeanor if such agency knowingly employs a person to provide in-home services or home
43 health services to any in-home services client or home health patient and such person either refuses
44 to register with the family care safety registry or is listed on any of the background check lists in the
45 family care safety registry pursuant to sections 210.900 to 210.937.

46 8. The highway patrol shall examine whether protocols can be developed to allow a provider
47 to request a statewide fingerprint criminal records review check through local law enforcement
48 agencies.

1 9. A provider may use a private investigatory agency rather than the highway patrol to do a
2 criminal history records review check, and alternatively, the applicant pays the private investigatory
3 agency such fees as the provider and such agency shall agree.

4 10. Except for the hiring restriction based on the department of health and senior services
5 employee disqualification list established pursuant to section 192.2490, the department of health and
6 senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this
7 section for good cause. For purposes of this section, "good cause" means the department has made a
8 determination by examining the employee's prior work history and other relevant factors that such
9 employee does not present a risk to the health or safety of residents."; and

10
11 Further amend said bill by amending the title, enacting clause, and intersectional references
12 accordingly.