

SECOND REGULAR SESSION

HOUSE BILL NO. 2249

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WOOD.

6104H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.025, 210.254, and 210.258, RSMo, and to enact in lieu thereof four new sections relating to background checks for child care providers.

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

Section A. Sections 210.025, 210.254, and 210.258, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 210.025, 210.254, 210.258, and
3 210.1080, to read as follows:

210.025. 1. **An applicant child care provider; persons employed by the applicant
2 child care provider for compensation, including contract employees or self-employed
3 individuals; individuals or volunteers whose activities involve the care or supervision of
4 children for the applicant child care provider or unsupervised access to children who are
5 cared for or supervised by the applicant child care provider; or individuals residing in the
6 applicant's family child care home who are seventeen years of age or older shall be
7 required to submit to a criminal background check under section 43.540 prior to an
8 applicant being granted a registration and every five years thereafter and an annual check
9 of the central registry for child abuse established in section 210.145 in order for the
10 applicant to qualify for receipt of state or federal funds for providing child-care services [in the
11 home] either by direct payment or through reimbursement to a child-care beneficiary[~~an
12 applicant and any person over the age of seventeen who is living in the applicant's home shall
13 be required to submit to a criminal background check pursuant to section 43.540 and a check of
14 the central registry for child abuse established in section 210.145. Effective January 1, 2001, the
15 requirements of this subsection or subsection 2 of this section shall be satisfied through~~**

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.

16 registration with the family care safety registry established in sections 210.900 to 210.936]. Any
17 costs associated with such checks shall be paid by the applicant.

18 2. Upon receipt of an application for state or federal funds for providing child-care
19 services in the home, the ~~[family support]~~ **children's** division shall:

20 (1) Determine if a finding of child abuse or neglect by probable cause prior to August
21 28, 2004, or by a preponderance of the evidence after August 28, 2004, involving the applicant
22 or any person over the age of seventeen who is living in the applicant's home has been recorded
23 pursuant to section 210.145 or 210.221;

24 (2) Determine if the applicant or any person over the age of seventeen who is living in
25 the applicant's home has been refused licensure or has experienced licensure suspension or
26 revocation pursuant to section 210.221 or 210.496; and

27 (3) Upon initial application, require the applicant to submit to fingerprinting and request
28 a criminal background check of the applicant and any person over the age of seventeen who is
29 living in the applicant's home pursuant to section 43.540 and section 210.487, and inquire of the
30 applicant whether any children less than seventeen years of age residing in the applicant's home
31 have ever been certified as an adult and convicted of, or pled guilty or nolo contendere to any
32 crime.

33 3. Except as otherwise provided in subsection 4 of this section, upon completion of the
34 background checks in subsection 2 of this section, an applicant shall be denied state or federal
35 funds for providing child care if such applicant, any person over the age of seventeen who is
36 living in the applicant's home, and any child less than seventeen years of age who is living in the
37 applicant's home and who the division has determined has been certified as an adult for the
38 commission of a crime:

39 (1) Has had a finding of child abuse or neglect by probable cause prior to August 28,
40 2004, or by a preponderance of the evidence after August 28, 2004, pursuant to section 210.145
41 or section 210.152;

42 (2) Has been refused licensure or has experienced licensure suspension or revocation
43 pursuant to section 210.496;

44 (3) Has pled guilty or nolo contendere to or been found guilty of any felony for an
45 offense against the person as defined by chapter 565, or any other offense against the person
46 involving the endangerment of a child as prescribed by law; of any misdemeanor or felony for
47 a sexual offense as defined by chapter 566; of any misdemeanor or felony for an offense against
48 the family as defined in chapter 568, with the exception of the sale of fireworks, as defined in
49 section 320.110, to a child under the age of eighteen; of any misdemeanor or felony for
50 pornography or related offense as defined by chapter 573; or of any similar crime in any federal,

51 state, municipal or other court of similar jurisdiction of which the director has knowledge or any
52 offenses or reports which will disqualify an applicant from receiving state or federal funds.

53 4. An applicant shall be given an opportunity by the division to offer any extenuating or
54 mitigating circumstances regarding the findings, refusals or violations against such applicant or
55 any person over the age of seventeen or less than seventeen who is living in the applicant's home
56 listed in subsection 2 of this section. Such extenuating and mitigating circumstances may be
57 considered by the division in its determination of whether to permit such applicant to receive
58 state or federal funds for providing child care in the home.

59 5. An applicant who has been denied state or federal funds for providing child care in
60 the home may appeal such denial decision in accordance with the provisions of section 208.080.

61 6. If an applicant is denied state or federal funds for providing child care in the home
62 based on the background check results for any person over the age of seventeen who is living in
63 the applicant's home, the applicant shall not apply for such funds until such person is no longer
64 living in the applicant's home.

65 7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
66 under the authority delegated in this section shall become effective only if it complies with and
67 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. All
68 rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed.
69 Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or
70 adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This
71 section and chapter 536 are nonseverable and if any of the powers vested with the general
72 assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and
73 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
74 any rule proposed or adopted after August 28, 1999, shall be invalid and void.

210.254. 1. Child-care facilities operated by religious organizations pursuant to the
2 exempt status recognized in subdivision (5) of section 210.211 shall upon enrollment of any
3 child provide the parent or guardian enrolling the child two copies of a notice of parental
4 responsibility, one copy of which shall be retained in the files of the facility after the enrolling
5 parent acknowledges, by signature, having read and accepted the information contained therein.

6 2. The notice of parental responsibility shall include the following:

7 (1) Notification that the child-care facility is exempt as a religious organization from
8 state licensing and therefore not inspected or supervised by the department of health and senior
9 services other than as provided herein and that the facility has been inspected by those designated
10 in section 210.252 and is complying with the fire, health and sanitation requirements of sections
11 210.252 to 210.257;

12 (2) The names, addresses and telephone numbers of agencies and authorities which
 13 inspect the facility for fire, health and safety and the date of the most recent inspection by each;

14 (3) The staff/child ratios for enrolled children under two years of age, for children ages
 15 two to four and for those five years of age and older as required by the department of health and
 16 senior services regulations in licensed facilities, the standard ratio of staff to number of children
 17 for each age level maintained in the exempt facility, and the total number of children to be
 18 enrolled by the facility;

19 (4) Notification that background checks have been conducted ~~[on each individual~~
 20 ~~caregiver and all other personnel at the facility. The background check shall be conducted upon~~
 21 ~~employment and every two years thereafter on each individual caregiver and all other personnel~~
 22 ~~at the facility. Such background check shall include a screening for child abuse or neglect~~
 23 ~~through the children's division, and a criminal record review through the Missouri highway patrol~~
 24 ~~pursuant to section 43.540. The fee for the criminal record review shall be limited to the actual~~
 25 ~~costs incurred by the Missouri highway patrol in conducting such review not to exceed ten~~
 26 ~~dollars] under section 210.1080;~~

27 (5) The disciplinary philosophy and policies of the child-care facility; and

28 (6) The educational philosophy and policies of the child-care facility.

29 3. A copy of notice of parental responsibility, signed by the principal operating officer
 30 of the exempt child-care facility and the individual primarily responsible for the religious
 31 organization conducting the child-care facility and copies of the annual fire and safety
 32 inspections shall be filed annually during the month of August with the ~~[director of the]~~
 33 ~~department of health and senior services. [Exempt child-care facilities which begin operation~~
 34 ~~after August 28, 1993, shall file such notice at least five days prior to starting to operate.]~~

210.258. The provisions of this section and section 210.259 apply to a child care facility
 2 maintained or operated under the exclusive control of a religious organization. Nothing in
 3 sections 210.252 to 210.257 shall be construed to authorize the department of health and senior
 4 services or any other governmental entity:

5 (1) To interfere with the program, curriculum, ministry, teaching or instruction offered
 6 in a child care facility;

7 (2) To interfere with the ~~[selection,]~~ certification~~;~~ **and** minimal formal educational
 8 degree requirements~~;~~ ~~supervision or terms of employment of a facility's personnel];~~

9 (3) ~~[To interfere with the selection of individuals sitting on any governing board of a~~
 10 ~~child care facility;~~

11 ~~——(4)] To interfere with the selection of children enrolled in a child care facility; or~~

12 ~~[(5)] (4) To prohibit the use of corporal punishment. However, the department of health~~
 13 ~~and senior services may require the child care facility to provide the parent or guardian enrolling~~

14 a child in the facility a written explanation of the disciplinary philosophy and policies of the child
15 care facility.

210.1080. 1. As used in this section, the following terms mean:

2 **(1) “Child care staff member”, a child care provider; persons employed by the child**
3 **care provider for compensation, including contract employees or self-employed**
4 **individuals; individuals or volunteers whose activities involve the care or supervision of**
5 **children for a child care provider or unsupervised access to children who are cared for or**
6 **supervised by a child care provider; or individuals residing in a family child care home**
7 **who are seventeen years of age and older;**

8 **(2) “Criminal background check”:**

9 **(a) A Federal Bureau of Investigation fingerprint check;**

10 **(b) A search of the National Crime Information Center's National Sex Offender**
11 **Registry; and**

12 **(c) A search of the following registries, repositories, or databases in Missouri, the**
13 **state where the child care staff member resides, and each state where such staff member**
14 **resided during the preceding five years:**

15 **a. The state criminal registry or repository, with the use of fingerprints being**
16 **required in the state where the staff member resides and optional in other states;**

17 **b. The state sex offender registry or repository; and**

18 **c. The state-based child abuse and neglect registry and database.**

19 **2. (1) Prior to the employment or presence of a child care staff member in a family**
20 **child care home, group child care home, child care center, or license-exempt child care**
21 **facility, the child care provider shall request the results of a criminal background check**
22 **for such child care staff member from the department of health and senior services.**

23 **(2) A prospective child care staff member may begin work for a child care provider**
24 **after the criminal background check has been requested from the department; however,**
25 **pending completion of the criminal background check, the prospective child care staff**
26 **member shall be supervised at all times by another child care staff member who received**
27 **a qualifying result on the criminal background check within the past five years.**

28 **(3) A family child care home, group child care home, child care center, or**
29 **license-exempt child care facility that has child care staff members at the time this section**
30 **becomes effective shall request the results of a criminal background check for all child care**
31 **staff members by January 31, 2019, unless the requirements for subsection 5 of this section**
32 **are met by the child care provider and proof is submitted to the department of health and**
33 **senior services by January 31, 2019.**

34 **3. The costs of the criminal background check shall be the responsibility of the**
35 **child care staff member but may be paid or reimbursed by the child care provider at the**
36 **provider's discretion. The fees charged for the criminal background check shall not exceed**
37 **the actual cost of processing and administration.**

38 **4. Except as otherwise provided in subsection 2 of this section, upon completion of**
39 **the criminal background check, any child care staff member or prospective child care staff**
40 **member shall be ineligible for employment or presence at a family child care home, a**
41 **group child care home, a licensed child care center, or a license-exempt child care facility**
42 **if such person:**

43 **(1) Refuses to consent to the criminal background check as required by this section;**

44 **(2) Knowingly makes a materially false statement in connection with the criminal**
45 **background check as required by this section;**

46 **(3) Is registered, or is required to be registered, on a state sex offender registry or**
47 **repository or the National Sex Offender Registry;**

48 **(4) Has a finding of child abuse or neglect under section 210.145 or 210.152 or any**
49 **other finding of child abuse or neglect based on any other state's registry or database;**

50 **(5) Has been convicted of a felony consisting of:**

51 **(a) Murder, as described in 18 U.S.C. Section 1111;**

52 **(b) Child abuse or neglect;**

53 **(c) A crime against children, including child pornography;**

54 **(d) Spousal abuse;**

55 **(e) A crime involving rape or sexual assault;**

56 **(f) Kidnapping;**

57 **(g) Arson;**

58 **(h) Physical assault or battery; or**

59 **(i) Subject to subsection 5 of this section, a drug-related offense committed during**
60 **the preceding five years;**

61 **(6) Has been convicted of a violent misdemeanor committed as an adult against a**
62 **child, including the following crimes: child abuse, child endangerment, or sexual assault,**
63 **or of a misdemeanor involving child pornography; or**

64 **(7) Has been convicted of any similar crime in any federal, state, municipal, or**
65 **other court.**

66

67 **Adult household members seventeen years of age and older in a family child care home**
68 **shall be ineligible to maintain presence at a family child care home if any one or more of**
69 **the provisions of this subsection applies to them.**

70 **5. A child care provider shall not be required to submit a request for a criminal**
71 **background check under this section for a child care staff member if:**

72 **(1) The staff member received a criminal background check within five years**
73 **before the latest date on which such a submission may be made and while employed by or**
74 **seeking employment by another child care provider within Missouri;**

75 **(2) The department of health and senior services provided to the first provider a**
76 **qualifying criminal background check result, consistent with this section, for the staff**
77 **member; and (3) The staff member is employed by a child care provider within Missouri**
78 **or has been separated from employment from a child care provider within Missouri for a**
79 **period of not more than one hundred eighty consecutive days.**

80 **6. (1) The department of health and senior services shall process the request for**
81 **a criminal background check for any prospective child care staff member or child care**
82 **staff member as expeditiously as possible, but not to exceed forty-five days after the date**
83 **on which the provider submitted the request.**

84 **(2) The department shall provide the results of the criminal background check to**
85 **the child care provider in a statement that indicates whether the prospective child care**
86 **staff member or child care staff member is eligible or ineligible for employment or**
87 **presence at the child care facility. The department shall not reveal to the child care**
88 **provider any disqualifying crime or other related information regarding the prospective**
89 **child care staff member or child care staff member.**

90 **(3) If such prospective child care staff member or child care staff member is**
91 **ineligible for employment or presence at the child care facility, the department shall, when**
92 **providing the results of criminal background check, include information related to each**
93 **disqualifying crime or other related information, in a report to such prospective child care**
94 **staff member or child care staff member, along with information regarding the**
95 **opportunity to appeal under subsection 7 of this section.**

96 **7. The prospective child care staff member or child care staff member may appeal**
97 **in writing to the department to challenge the accuracy or completeness of the information**
98 **contained in his or her criminal background check, or to offer information mitigating the**
99 **results and explaining why an eligibility exception should be granted. The department of**
100 **health and senior services shall attempt to verify the accuracy of the information**
101 **challenged by the individual, including making an effort to locate any missing disposition**
102 **information related to the disqualifying crime. The appeal shall be filed within ten days**
103 **from the delivery or mailing of the notice of ineligibility. The department shall make a**
104 **decision on the appeal in a timely manner.**

105 **8. The department may adopt emergency rules to implement the requirements of**
106 **this section. Any rule or portion of a rule, as that term is defined in section 536.010, that**
107 **is created under the authority delegated in this section shall become effective only if it**
108 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
109 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**
110 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
111 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
112 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2018,**
113 **shall be invalid and void.**

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