

SECOND REGULAR SESSION

SENATE BILL NO. 1007

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time February 19, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6001S.011

AN ACT

To repeal sections 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.070, 36.080, 36.090, 36.100, 36.110, 36.120, 36.130, 36.140, 36.150, 36.170, 36.180, 36.190, 36.200, 36.210, 36.220, 36.225, 36.240, 36.250, 36.260, 36.270, 36.280, 36.290, 36.300, 36.310, 36.320, 36.340, 36.360, 36.380, 36.390, 36.400, 36.440, 36.470, 36.510, 37.010, 105.055, 207.085, 621.075, and 630.167, RSMo, and to enact in lieu thereof thirty-seven new sections relating to the state personnel law, with existing penalty provisions.

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

Section A. Sections 36.020, 36.030, 36.031, 36.040, 36.050, 36.060, 36.070, 36.080, 36.090, 36.100, 36.110, 36.120, 36.130, 36.140, 36.150, 36.170, 36.180, 36.190, 36.200, 36.210, 36.220, 36.225, 36.240, 36.250, 36.260, 36.270, 36.280, 36.290, 36.300, 36.310, 36.320, 36.340, 36.360, 36.380, 36.390, 36.400, 36.440, 36.470, 36.510, 37.010, 105.055, 207.085, 621.075, and 630.167, RSMo, are repealed and thirty-seven new sections enacted in lieu thereof, to be known as sections 36.020, 36.025, 36.030, 36.031, 36.040, 36.050, 36.060, 36.070, 36.080, 36.090, 36.100, 36.110, 36.120, 36.130, 36.140, 36.150, 36.170, 36.180, 36.190, 36.200, 36.220, 36.225, 36.240, 36.250, 36.280, 36.320, 36.340, 36.380, 36.390, 36.400, 36.440, 36.510, 37.010, 105.055, 207.085, 621.075, and 630.167, to read as follows:

36.020. Unless the context clearly requires otherwise, the following terms mean:

(1) "Agency", "state agency" or "agency of the state", each department, board, commission or office of the state except for offices of the elected officials, the general assembly, the judiciary and academic institutions;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

6 (2) "Appointing authority", an officer or agency subject to this chapter
7 having power to make appointments;

8 (3) "Board", the personnel advisory board as established by section 36.050;

9 (4) "Broad classification band", a grouping of positions with similar levels
10 of responsibility or expertise;

11 (5) "Class" [or], "class of positions", **or "job class"**, a group of positions
12 subject to this chapter sufficiently alike in duties, authority and responsibilities
13 to justify the same qualifications and the same schedule of pay to all positions in
14 the group;

15 (6) "Director", the director of the division of personnel of the office of
16 administration;

17 (7) "Disabled veteran", a veteran who has served on active duty in the
18 Armed Forces at any time who receives compensation as a result of a
19 service-connected disability claim allowed by the federal agency responsible for
20 the administration of veteran's affairs, or who receives disability retirement or
21 disability pension benefits from a federal agency as a result of such a disability
22 or a National Guard veteran who was permanently disabled as a result of active
23 service to the state at the call of the governor;

24 (8) "Division of service" or "division", a state department or any division
25 or branch of the state, or any agency of the state government, all the positions
26 and employees in which are under the same appointing authority;

27 (9) **"Eleemosynary or penal institutions", an institution within**
28 **state government holding, housing, or caring for inmates, patients,**
29 **veterans, juveniles, or other individuals entrusted to or assigned to the**
30 **state where it is anticipated that such individuals will be in residence**
31 **for longer than one day. "Eleemosynary or penal institutions" shall not**
32 **include elementary, secondary, or higher education institutions**
33 **operated separately or independently from the foregoing institutions;**

34 (10) "Eligible", a person whose name is on a register or who has been
35 determined to meet the qualifications for a class or position;

36 [(10)] (11) **"Employee", shall include only those persons employed**
37 **in excess of thirty-two hours per calendar week, for a duration that**
38 **could exceed six months, by a state agency and shall not include**
39 **patients, inmates, or residents in state eleemosynary or penal**
40 **institutions who work for the state agency operating an eleemosynary**
41 **or penal institutions;**

42 **(12) "Examination" or "competitive examination", a means of**
43 **determining eligibility or fitness for a class or position;**

44 **(13) "Open competitive examination", a [test] selection process** for
45 positions in a particular class, admission to which is not limited to persons
46 employed in positions subject to this chapter **pursuant to subsection 1 of**
47 **section 36.030;**

48 [(11)] **(14) "Promotional examination", a [test] selection process** for
49 positions in a particular class, admission to which is limited to employees with
50 regular status in positions subject to this chapter **pursuant to subsection 1 of**
51 **section 36.030;**

52 [(12)] **"Public hearing", a hearing held after public notice at which any**
53 **person has a reasonable opportunity to be heard;**

54 (13)] **(15) "Register of eligibles", a list, which may be restricted by**
55 **locality, of persons who have been found qualified [by an open competitive**
56 **examination] for appointment to a position subject to this chapter pursuant**
57 **to subsection 1 of section 36.030;**

58 [(14)] **(16) "Regular employee", [an employee] a person employed in**
59 **a position described under subdivision (2) of subsection 1 of section**
60 **36.030** who has successfully completed a probationary period as provided in
61 section 36.250;

62 [(15)] **"Reinstatement register", a list of persons who have been regular**
63 **employees and who have been laid off in good standing due to lack of work or**
64 **funds, or other similar cause, or who have been demoted in lieu of layoff;**

65 (16)] **(17) "State equal employment opportunity officer", the individual**
66 **designated by the governor or the commissioner of administration as having**
67 **responsibility for monitoring the compliance of the state as an employer with**
68 **applicable equal employment opportunity law and regulation and for leadership**
69 **in efforts to establish a state workforce which reflects the diversity of Missouri**
70 **citizens at all levels of employment;**

71 [(17)] **(18) "Surviving spouse", the unmarried surviving spouse of a**
72 **deceased disabled veteran or the unmarried survivor's spouse of any person**
73 **who was killed while on active duty in the Armed Forces of the United States or**
74 **an unmarried surviving spouse of a National Guard veteran who was killed as a**
75 **result of active service to the state at the call of the governor;**

76 [(18)] **(19) "Veteran", any person who is a citizen of this state who has**
77 **been separated under honorable conditions from the Armed Forces of the United**

78 States who served on active duty during peacetime or wartime for at least six
79 consecutive months, unless released early as a result of a service-connected
80 disability or a reduction in force at the convenience of the government, or any
81 member of a reserve or National Guard component who has satisfactorily
82 completed at least six years of service or who was called or ordered to active duty
83 by the President and participated in any campaign or expedition for which a
84 campaign badge or service medal has been authorized.

**36.025. Except as otherwise provided in section 36.030, all
2 employees of the state shall be employed at-will, may be selected in the
3 manner deemed appropriate by their respective appointing authorities,
4 shall serve at the pleasure of their respective appointing authorities,
5 and may be discharged for no reason or any reason not prohibited by
6 law.**

36.030. 1. [A system of personnel administration based on merit
2 principles and designed to secure efficient administration is established for all
3 offices, positions and employees, except attorneys, of the department of social
4 services, the department of corrections, the department of health and senior
5 services, the department of natural resources, the department of mental health,
6 the division of personnel and other divisions and units of the office of
7 administration, the division of employment security, mine safety and on-site
8 consultation sections of the division of labor standards and administration
9 operations of the department of labor and industrial relations, the division of
10 tourism and division of workforce development, the Missouri housing development
11 commission, and the office of public counsel of the department of economic
12 development, the Missouri veterans commission, capitol police and state
13 emergency management agency of the department of public safety, such other
14 agencies as may be designated by law, and such other agencies as may be]

15 **(1) Employees in eleemosynary or penal institutions shall be
16 selected on the basis of merit.**

17 **(2) So much of any agency that is required to maintain personnel
18 standards on a merit basis by federal law or regulations for grant-in-aid
19 programs[; except that,] shall, except for those positions specified in
20 subsection 2 of this section, select employees on the basis of merit and
21 maintain such standards as specified in this chapter and as otherwise
22 required.**

23 **2. State agencies operating eleemosynary or penal institutions**

24 **shall not domicile** the following [offices and] positions [of these agencies are
25 not subject to this chapter and may be filled without regard to its provisions] **in**
26 **such institutions and such positions shall not be selected in accordance**
27 **with subsection 1 of this section:**

28 (1) Other provisions of the law notwithstanding, members of boards and
29 commissions, departmental directors, five principal assistants designated by the
30 departmental directors, division directors, and three principal assistants
31 designated by each division director[; except that, these exemptions shall not
32 apply to the division of personnel];

33 (2) One principal assistant for each board or commission, the members of
34 which are appointed by the governor or by a director of the department;

35 (3) Chaplains and attorneys [regularly employed or appointed in any
36 department or division subject to this chapter, except as provided in section
37 36.031];

38 (4) Persons employed in work assignments with a geographic location
39 principally outside the state of Missouri and other persons whose employment is
40 such that selection by competitive examination and standard classification and
41 compensation practices are not practical under all the circumstances as
42 determined by the board by rule;

43 (5) Patients [or], inmates, **or residents** in state [charitable,] penal [and
44 correctional] institutions who [may also be employees in the institutions] **work**
45 **for the agency operating the eleemosynary or penal institution;**

46 (6) Persons employed in an internship capacity in a state department or
47 institution as a part of their formal training, at a college, university, business,
48 trade or other technical school; except that, by appropriate resolution of the
49 governing authorities of any department or institution, the personnel division
50 may be called upon to assist in selecting persons to be appointed to internship
51 positions;

52 (7) The administrative head of each state medical, penal and correctional
53 institution, as warranted by the size and complexity of the organization and as
54 approved by the board;

55 (8) Deputies or other policy-making assistants to the exempt head of each
56 division of service, as warranted by the size or complexity of the organization and
57 in accordance with the rules promulgated by the personnel advisory board;

58 (9) Special assistants as designated by an appointing authority; except
59 that, the number of such special assistants shall not exceed [one] **two** percent of

60 a department's total authorized full-time equivalent workforce[;

61 (10) Merit status shall be retained by present incumbents of positions
62 identified in this section which have previously been subject to this chapter].

63 [2. All positions in the executive branch transferred to coverage pursuant
64 to this chapter where incumbents of such positions have at least twelve months'
65 prior service on the effective date of such transfer shall have incumbency
66 preference and shall be permitted to retain their positions, provided they meet
67 qualification standards acceptable to the division of personnel of the office of
68 administration. An employee with less than twelve months of prior service on the
69 effective date of such transfer or an employee who is appointed to such position
70 after the effective date of such transfer and prior to the classification and
71 allocation of the position by the division of personnel shall be permitted to retain
72 his or her position, provided he or she meets acceptable qualification standards
73 and subject to successful completion of a working test period which shall not
74 exceed twelve months of total service in the position. After the allocation of any
75 position to an established classification, such position shall thereafter be filled
76 only in accordance with all provisions of this chapter.

77 3. The system of personnel administration governs the appointment,
78 promotion, transfer, layoff, removal and discipline of employees and officers and
79 other incidents of employment in divisions of service subject to this chapter, and
80 all appointments and promotions to positions subject to this chapter shall be
81 made on the basis of merit and fitness.

82 4.] 3. To encourage all state employees to improve the quality of state
83 services, increase the efficiency of state work operations, and reduce the costs of
84 state programs, the director of the division of personnel shall establish employee
85 recognition programs, including a statewide employee suggestion system. The
86 director shall determine reasonable rules and shall provide reasonable standards
87 for determining the monetary awards, not to exceed five thousand dollars, under
88 the employee suggestion system. [Awards shall be made from funds appropriated
89 for this purpose.]

90 [5.] 4. At the request of the senate or the house of representatives, the
91 commissioner of administration shall submit a report on the employee suggestion
92 award program described in subsection [4] 3 of this section.

36.031. 1. Any provision of law to the contrary notwithstanding, except
2 for the elective offices, institutions of higher learning, the department of
3 transportation, the department of conservation, [those positions in] **the**

4 **department of higher education, the department of elementary and**
5 **secondary education**, the Missouri state highway patrol [the compensation of
6 which is established by subdivision (2) of subsection 2 of section 43.030 and
7 section 43.080], those positions in the division of finance and the division of credit
8 unions compensated through a dedicated fund obtained from assessments and
9 license fees under sections 361.170 and 370.107, and those positions for which the
10 constitution specifically provides the method of selection, classification, or
11 compensation, and the positions specified in subsection [1] 2 of section 36.030,
12 [but including attorneys, those] departments, agencies and positions of the
13 executive branch of state government [which have not been subject to these
14 provisions of the state personnel law] shall be subject to the provisions of sections
15 36.100, 36.110, 36.120 [and], 36.130, **36.140, and 36.180**, and the regulations
16 adopted pursuant to sections 36.100, 36.110, 36.120 [and], 36.130, **36.140, and**
17 **36.180**, which relate to the preparation, adoption and maintenance of a position
18 classification plan, the establishment and allocation of positions within the
19 classification plan and the use of appropriate class titles in official records,
20 vouchers, payrolls and communications.

21 **2.** Any provision of law which confers upon any official or agency subject
22 to the provisions of this section the authority to appoint, classify or establish
23 compensation for employees shall mean the exercise of such authority subject to
24 the provisions of this section.

25 **3.** This section shall not extend coverage of any section of this chapter,
26 except those specifically named in this section, to any **department**, agency, or
27 employee **of the executive branch of state government**. In accordance with
28 sections 36.100, 36.110, 36.120 [and], 36.130, **36.140, and 36.180**, and after
29 consultation with appointing authorities, the director of the division of personnel
30 shall conduct such job studies and job reviews and establish such additional new
31 and revised job classes as the director finds necessary for appropriate
32 classification of the positions involved. Such classifications and the allocation of
33 positions to classes shall be maintained on a current basis by the division of
34 personnel. The director of the division of personnel shall, at the same time, notify
35 all affected agencies of the appropriate assignment of each job classification to
36 one of the salary ranges within the pay plan [then applicable to merit system
37 agencies]. The affected agencies and employees in the classifications set
38 pursuant to this section shall be subject to the pay plan and rates of
39 compensation established and administered in accordance with the provisions of

40 this section[, and the regulations adopted pursuant to this section, on the same
41 basis as for merit agency employees. In addition,].

42 4. Any elected official, institution of higher learning, the department of
43 transportation, the department of conservation, the general assembly, or any
44 judge who is the chief administrative officer of the judicial branch of state
45 government may request the division of personnel to study salaries within the
46 requestor's office, department or branch of state government for classification
47 purposes.

36.040. 1. The division of personnel of the office of administration, the
2 administrative head of which is the personnel director, shall administer this
3 chapter and render the services to the departments and divisions subject to the
4 provisions of this chapter that are necessary and desirable to assist the officials
5 in discharging their responsibility for maintaining and increasing the
6 effectiveness of personnel administration. The division shall provide consultation
7 and expertise in personnel management to all agencies to assist in the
8 accomplishment of the missions of such agencies.

9 2. The division shall administer this chapter in a manner which complies
10 with equal opportunity law and shall consult with the state equal employment
11 opportunity officer in various aspects of the administration of this chapter to
12 ensure such compliance. In particular, the division shall consult with the state
13 equal employment opportunity officer regarding the classification plan, the pay
14 plan, qualifications for admittance to examinations, [noncompetitive registration]
15 and **nonmerit** selection procedures[, waiver of competitive examinations,
16 noncompetitive promotions, alternative promotional procedures, alternatives for
17 filling vacancies, and layoff actions,] for the purpose of ensuring compliance with
18 equal opportunity law and regulations, and on developed plans to establish a
19 state workforce which reflects the diversity of Missouri citizens at all levels of
20 employment.

36.050. 1. The personnel advisory board and its functions, duties and
2 powers prescribed in this chapter is transferred by type III transfer to the office
3 of administration.

4 2. The personnel advisory board shall consist of seven members. Four
5 members of the board shall be public members, citizens of the state who are not
6 state employees or officials, of good character and reputation, who are known to
7 be in sympathy with the application of merit principles to public
8 employment. Two members shall be employees of state agencies [covered by]

9 **subject to this chapter pursuant to subsection 1 of section 36.030 or any**
10 **department, agency, or position of the executive branch of state**
11 **government not exempted from** section 36.031, one a member of executive
12 management, and one a nonmanagement employee. The state equal employment
13 opportunity officer shall be a member of the board. No member of the board,
14 during the member's term of office, or for at least one year prior thereto, shall be
15 a member of any local, state or national committee of a political party or an
16 officer or member of a committee in any partisan political club or organization,
17 or hold, or be a candidate for, a partisan public office. An employee member who
18 leaves state employment or otherwise fails to further qualify for the appointment
19 shall vacate the position.

20 3. The members of the board shall be appointed by the governor by and
21 with the advice and consent of the senate. [The three current members of the
22 board serving terms which expire July 31, 1998, July 31, 2000, and July 31, 2002,
23 shall continue to serve for the terms for which they were previously
24 appointed. One new public member shall be appointed for a term ending July 31,
25 1998, one employee member shall be appointed for a term ending July 31, 2000,
26 and one employee member shall be appointed for a term ending July 31,
27 2002. Thereafter,] Appointments of all members shall be for terms of six
28 years. Any vacancy shall be filled by an appointment for the unexpired
29 term. Each member of the board shall hold office until such member's successor
30 is appointed and qualified.

31 4. A member of the board is removable by the governor only for just cause,
32 after being given a written notice setting forth in substantial detail the charges
33 against the member and an opportunity to be heard publicly on the charges before
34 the governor. A copy of the charges and a transcript of the record of the hearing
35 shall be filed with the secretary of state.

36 5. Each public member of the board shall be paid an amount for each day
37 devoted to the work of the board which shall be determined by the commissioner
38 of administration and filed with the reorganization plan of the office of
39 administration; provided, however, that such amount shall not exceed that paid
40 to members of boards and commissions with comparable responsibilities. All
41 board members are entitled to reimbursement for necessary travel and other
42 expenses pertaining to the duties of the board. Duties performed for the board
43 by any employee member of the board shall be considered duties in connection
44 with the appointment of the individual, and such employee member shall suffer

45 no loss of regular compensation by reason of performance of such duties.

46 6. The board shall elect from among its membership a chairman and vice
47 chairman, who shall act as chairman in the chairman's absence. It shall meet at
48 the times and places specified by call of the chairman, the governor, or the
49 director. At least one meeting shall be held every three months. All regular
50 meetings are open to the public. Notice of each meeting shall be given in writing
51 to each member by the director. [Two members shall constitute a quorum until
52 January 1, 1997, thereafter,] Four members shall constitute a quorum for the
53 transaction of official business.

54 7. To assist in the performance of its duties the board may employ staff
55 from funds appropriated for this purpose; provided, however, that this provision
56 shall not be interpreted to limit the ability of the personnel director to provide
57 assistance to the board.

 36.060. 1. In addition to the duties imposed upon it elsewhere in this
2 chapter, it shall be the duty of the board:

3 (1) To make any investigation which it may consider desirable concerning
4 the administration of personnel subject to this [law] **chapter pursuant to**
5 **subsection 1 of section 36.030 and all personnel of any department or**
6 **agency of the executive branch of state government not exempted from**
7 **section 36.031;**

8 (2) To hold regular meetings with appointing authorities to propose
9 methods of resolving general personnel problems;

10 (3) To make annual reports, and such special reports as it considers
11 desirable, to the governor and the general assembly regarding personnel
12 administration in the state service and recommendations there. These special
13 reports [shall] **may** evaluate the effectiveness of the personnel division and the
14 appointing [authority] **authorities** in their operations under this [law] **chapter;**

15 (4) To make such suggestions and recommendations to the governor and
16 the director relating to the state's employment policies as will promote morale,
17 efficiency and uniformity in compensation of the various employees in the state
18 service;

19 (5) To promulgate rules and regulations to ensure that no applicant or
20 employee is discriminated against on the basis of race, creed, color, religion,
21 national origin, sex, ancestry or handicap.

22 2. No rule or portion of a rule promulgated under the authority of this
23 chapter shall become effective unless it has been promulgated pursuant to the

24 provisions of section 536.024.

36.070. 1. The board shall have power to prescribe such rules and
2 regulations not inconsistent with the provisions of this chapter as it deems
3 suitable and necessary to carry out the provisions of this chapter. Such rules and
4 regulations shall be effective when filed with the secretary of state as provided
5 by law.

6 2. The board shall prescribe by rule the procedures for [employment and
7 promotion] **merit selection, uniform classification and pay, and covered**
8 **appeals** in accordance with the provisions of this chapter.

9 [3. The board shall determine by rule the procedures for and causes of
10 disciplinary actions including termination, demotion and suspension of employees
11 subject to this chapter which regulations shall be consistent with the provisions
12 of this law.]

36.080. 1. The director shall be a person who is experienced in the
2 principles and methods of personnel administration, who is familiar with and in
3 sympathy with the application of merit principles and efficient methods of public
4 administration. [He] **The director** shall be appointed for a term of four years
5 beginning on July first following the election of a governor, which term may be
6 renewed at its expiration at the option of the governor[; except that the provisions
7 of this section shall not apply to the incumbent personnel director on September
8 28, 1979, who shall retain such merit system status as has been previously
9 attained].

10 2. The personnel director shall not during his **or her** term of office, or for
11 one year prior thereto:

12 (1) Be a member of any local, state or national committee of a political
13 party;

14 (2) Be a member of any partisan political club or organization;

15 (3) Actively participate in any partisan political campaign; or

16 (4) Hold or be a candidate for any partisan public office.

17 3. Upon an impending or actual vacancy in the position of director, the
18 board shall publicly solicit applications for the position and prepare and submit
19 to the governor a list of the five most qualified applicants. In the course of
20 preparing such a list the board may engage the services of persons experienced
21 in personnel administration as consultants to assist it in examining and
22 determining the best qualified available persons for appointment as director. The
23 board shall be authorized to pay, out of the funds appropriated to it, the

24 necessary travel and other expenses of any consultants engaged under the
25 provisions of this section, and may also defray the travel expenses of candidates
26 for the position who are requested to report for an interview. **The director may**
27 **also assist the board with the search process and division of personnel**
28 **resources may be used to advance the search process.**

29 4. The provisions of subdivision (2) of subsection 5 of section 1 of the
30 Reorganization Act of 1974 notwithstanding, the total compensation of any
31 director [appointed after September 28, 1979,] shall not exceed the statutory
32 salary of department heads.

33 5. The provisions of subsection 8 of section 15 of the Reorganization Act
34 of 1974 notwithstanding, the governor shall appoint to the position of director,
35 without regard to his **or her** political affiliation and subject to the advice and
36 consent of the senate, one of the persons named on the list submitted by the
37 board.

38 6. The director may be removed by the board for [just cause after being
39 given a notice setting forth in substantial detail the charges before the board. A
40 copy of the charges and a transcript of the record of the hearing shall be filed
41 with the secretary of state] **no reason or for any reason.**

36.090. 1. The director, as executive head of the personnel division, shall
2 direct and supervise all its administrative and technical activities. In addition
3 to the duties imposed upon [him] **the director** elsewhere in this chapter, [it
4 shall be his duty:

5 (1) To require the development of effective personnel administration and
6 to make available the facilities of the division to this end;

7 (2) To] **the director may** develop in cooperation with appointing
8 authorities a management training program, a recruiting program, and a system
9 of performance appraisals, and to assist appointing authorities in the setting of
10 productivity goals.

11 2. The director shall assist the board in the performance of its functions
12 and attend board meetings.

13 3. The director [shall] **may**:

14 (1) Establish and maintain a roster of all officers and employees subject
15 to this [law] **chapter pursuant to subsection 1 of section 36.030 or**
16 **pursuant to section 36.031**, in which there shall be set forth, as to each
17 employee, a record of the class title of the position held; the salary or pay; any
18 change in class title, pay or status, and such other data as may be deemed

19 desirable to produce significant facts pertaining to personnel administration;

20 (2) Appoint[, under the provisions of this chapter, and, with the approval
21 of the board,] **and** fix the compensation of such experts and special assistants
22 as may be necessary to carry out effectively the provisions of this chapter[, such
23 employees to be selected upon the basis of merit and fitness and as other
24 employees subject to this law unless otherwise directed under the provisions of
25 this chapter];

26 (3) Investigate the effects of this [law,] **chapter and** the rules
27 promulgated under this [law] **chapter** and [the operation of the merit system
28 and] report his [finding] **or her findings** and recommendations to the board and
29 the governor;

30 (4) Make annual reports concerning the work of the division, problems in
31 personnel management, and actions taken or to be taken by the division to
32 resolve those problems;

33 (5) Perform any other lawful act which he **or she** may consider necessary
34 or desirable to carry out the purposes and provisions of this [law] **chapter**.

35 4. The director shall appoint[, in full conformity with all the provisions
36 of this chapter,] a deputy or deputies. In case of the absence of the director or his
37 **or her** inability from any cause to discharge the powers and duties of his **or her**
38 office, such powers and duties shall devolve upon his **or her** deputy.

36.100. 1. The director shall ascertain the duties, authority and
2 responsibilities of all positions subject to this chapter **pursuant to subsection**
3 **1 of section 36.030, and all positions subject to this section pursuant to**
4 **section 36.031**. After consultation with the appointing authorities, the director
5 shall prepare and recommend to the board, and maintain on a continuing basis,
6 a position classification plan, which shall group all positions [in the classified
7 service] **subject to this chapter pursuant to subsection 1 of section**
8 **36.030, and all positions subject to this section pursuant to section**
9 **36.031** in classes, based on their duties, authority and responsibilities. Except
10 as provided in subsection 2 of this section, the position classification plan shall
11 set forth, for each class of positions, a class title and a statement of the duties,
12 authority and responsibilities thereof, and the qualifications that are necessary
13 or desirable for the satisfactory performance of the duties of the class; provided,
14 that no plan shall be adopted which prohibits the substitution of experience for
15 education for each class of positions, except that, the board may determine that
16 there is no equivalent substitution in particular cases. Classifications should be

17 sufficiently broad in scope to include as many comparable positions as possible
18 both on an intra- and inter-departmental basis[, including both merit and
19 nonmerit agencies].

20 2. The classification plan may group [management] positions with similar
21 levels of responsibility or expertise into broad classification bands.

22 3. The director shall [require an initial and ongoing review of the number
23 of classifications in each division of service and shall], in consultation with the
24 agencies, eliminate and combine classes when possible, taking into consideration
25 the recruitment, [examination,] selection, and compensation of personnel in the
26 various classes.

36.110. After consultation with appointing authorities, the director shall
2 allocate each position [in the classified service] **subject to this chapter**
3 **pursuant to subsection 1 of section 36.030 and each position subject to**
4 **this section pursuant to section 36.031** to the appropriate class therein on
5 the basis of its duties, authority and responsibilities. The director may delegate
6 allocation authority to the appointing authorities for positions in classes in their
7 divisions of service within standards and limits which have been developed in
8 consultation with and agreed to by the appointing authorities. Any employee
9 affected by the allocation of a position to a class, whether by the director or by the
10 appointing authority, shall, after filing with the director a written statement
11 setting forth reasons for requesting a consideration thereof, be given a reasonable
12 opportunity to be heard thereon by the director.

36.120. 1. Before establishing a new position in divisions of the service
2 subject to this chapter **pursuant to subsection 1 of section 36.030 or any**
3 **new position in a department or agency of the executive branch of state**
4 **government subject to this section pursuant to section 36.031**, or before
5 making any permanent and substantial change of the duties, authority or
6 responsibilities of [a] **any such** position [subject to this chapter], an appointing
7 authority shall notify the director in writing of the appointing authority's
8 intention to do so, except where the positions may be allocated by the appointing
9 authority.

10 2. The director may at any time allocate any new position to a class, or
11 change the allocation of any position to a class, or recommend to the board
12 changes in the classification plan. Any change in the classification plan
13 recommended by the director shall take effect when approved by the board, or on
14 the ninetieth day after it is recommended to the board if prior thereto the board

15 has not approved it. In case of necessity requiring the immediate establishment
16 of a new class, the director may establish such a class on an interim basis
17 pending approval of the class by the board as recommended by the director.

18 3. When the allocation of a position to a class is changed, the director
19 shall notify the appointing authority. If allocation authority is delegated, the
20 appointing authority shall notify the director of any changes in the allocation. If
21 the position is filled at the time of reallocation to a class, the appointing
22 authority shall immediately notify the incumbent of the position regarding the
23 allocation change. If the incumbent does not agree with the new allocation, the
24 incumbent may[, under conditions specified in the rules,] submit to the director
25 a request for a review of the allocation of the position.

26 4. If any change is made in the classification plan by which a class of
27 positions is divided, altered, or abolished, or classes are combined, the director
28 shall forthwith reallocate the positions affected to their appropriate classes in the
29 amended classification plan. An employee who is occupying a position reallocated
30 to a different class shall, subject to the regulations, be given the same status in
31 the new class as previously held in the class from which his or her position is
32 reallocated. [The director may require that the employee achieve a satisfactory
33 grade on a noncompetitive test of fitness for the class to which his or her position
34 has been reallocated.]

35 5. After a class of positions has been approved by the board, the director
36 is authorized to make such changes in the class title or in the statement of duties
37 and qualifications for the class as the director finds necessary for current
38 maintenance of the classification plan; provided, however, that changes which
39 materially affect the nature and level of a class or which involve a change in
40 salary range for the class shall be approved by the board.

36.130. Following the adoption of the classification plan and the allocation
2 of classes therein [of positions in the classified service], the class titles set forth
3 therein shall be used to designate such positions in all official records, vouchers,
4 payrolls, and communications. No person shall be appointed to, or employed in,
5 a position in divisions of the service subject to this [law] **chapter pursuant to**
6 **subsection 1 of section 36.030 or a position in a department or agency**
7 **of state government subject to this section pursuant to section 36.031**
8 under a class title which has not been approved by the director as appropriate to
9 the duties to be performed.

36.140. 1. After consultation with appointing authorities and the state

2 fiscal officers, and after a public hearing **following suitable notice**, the director
3 shall prepare and recommend to the board a pay plan for [all classes] **each class**
4 **of positions** subject to this chapter **pursuant to subsection 1 of section**
5 **36.030 and each class of positions subject to this section pursuant to**
6 **section 36.031**. The pay plan shall include, for each class of positions, a
7 minimum and a maximum rate, and such provision for intermediate rates as the
8 director considers necessary or equitable. **The pay plan may also provide for**
9 **the use of open, or stepless, pay ranges**. The pay plan may include provision
10 for grouping of [management] positions with similar levels of responsibility or
11 expertise into broad classification bands for purposes of determining
12 compensation and for such salary differentials and other pay structures as the
13 director considers necessary or equitable. In establishing the rates, the director
14 shall give consideration to the experience in recruiting for positions in the state
15 service, the rates of pay prevailing in the state for the services performed, and for
16 comparable services in public and private employment, living costs, maintenance,
17 or other benefits received by employees, and the financial condition and policies
18 of the state. These considerations shall be made on a statewide basis and shall
19 not make any distinction based on geographical areas or urban and rural
20 conditions. The pay plan shall take effect when approved by the board and the
21 governor, and each employee appointed to a position subject to this chapter
22 **pursuant to subsection 1 of section 36.030 and each class of positions**
23 **subject to this section pursuant to section 36.031**, after the adoption of the
24 pay plan shall be paid according to the provisions of the pay plan for the position
25 in which he or she is employed; provided, that the commissioner of administration
26 certifies that there are funds appropriated and available to pay the adopted pay
27 plan. The pay plan shall also be used as the basis for preparing budget estimates
28 for submission to the legislature insofar as such budget estimates concern
29 payment for services performed in positions subject to this chapter **pursuant to**
30 **subsection 1 of section 36.030 and positions subject to this section**
31 **pursuant to section 36.031**. Amendments to the pay plan may be
32 recommended by the director from time to time as circumstances require and such
33 amendments shall take effect when approved as provided by this section. The
34 conditions under which employees may be appointed at a rate above the minimum
35 provided for the class, or advance from one rate to another within the rates
36 applicable to their positions, [shall] **may** be determined by the regulations.

37 2. Any change in the pay plan shall be made on a uniform statewide basis.

38 No employee in a position subject to this chapter shall receive more or less
39 compensation than another employee solely because of the geographical area in
40 which the employee lives or works.

36.150. 1. Every appointment or promotion to a position covered by this
2 chapter **pursuant to subsection 1 of section 36.030** shall be made on the
3 basis of merit as provided in this chapter. [Demotions in and dismissals from
4 employment shall be made for cause under rules and regulations of the board
5 uniformly applicable to all positions of employment.] No **such selection,**
6 **appointment, or promotion**[, demotion or dismissal] shall be made [because of
7 favoritism, prejudice or] **on the basis of unlawful discrimination proscribed**
8 **under Missouri law or any applicable federal law.** The regulations shall
9 prohibit **such unlawful** discrimination in other phases of employment and
10 personnel administration [and shall provide such remedy as is required by federal
11 merit system standards for grant-in-aid programs].

12 2. Political endorsements shall not be considered in connection with any
13 such appointment.

14 3. No person shall use or promise to use, directly or indirectly, for any
15 consideration whatsoever, any official authority or influence to secure or attempt
16 to secure for any person an appointment or advantage in appointment to any such
17 position or an increase in pay, promotion or other advantage in employment.

18 4. No person shall in any manner levy or solicit any financial assistance
19 or subscription for any political party, candidate, political fund, or publication,
20 or for any other political purpose, from any employee in a position subject to this
21 chapter, and no such employee shall act as agent in receiving or accepting any
22 such financial contribution, subscription, or assignment of pay. No person shall
23 use, or threaten to use, coercive means to compel an employee to give such
24 assistance, subscription, or support, nor in retaliation for the employee's failure
25 to do so.

26 5. No such employee shall be a candidate for nomination or election to any
27 partisan public office or nonpartisan office in conflict with that employee's duties
28 unless such person resigns, or obtains a regularly granted leave of absence, from
29 such person's position.

30 6. No person elected to partisan public office shall, while holding such
31 office, be appointed to any position covered by this chapter.

32 7. Any officer or employee in a position subject to this chapter who
33 purposefully violates any of the provisions of this section shall forfeit such office

34 or position. If an appointing authority finds that such a violation has occurred,
35 or is so notified by the director, this shall constitute cause for dismissal [pursuant
36 to section 36.390 and a final determination by the administrative hearing
37 commission as to the occurrence of a violation].

36.170. 1. **The standards of education or experience expected for**
2 **a position subject to this chapter pursuant to subsection 1 of section**
3 **36.030 shall be established on the basis of specified knowledge, skills,**
4 **and abilities.** The director [shall from time to time] **or an appointing**
5 **authority may** conduct such open competitive and promotional examinations as
6 [the director considers necessary] **appropriate to implement the provisions**
7 **of subsection 1 of section 36.030.** The examinations shall be of such
8 character as to determine the [relative] qualifications, fitness and ability of the
9 persons [tested] **examined** to perform the duties of the **position or** class for
10 which a register is to be established. No question shall be so framed as to elicit
11 information concerning the political or religious opinions or affiliations of an
12 applicant.

13 2. Agencies may request authority from the director, **or the director**
14 **may delegate authority to agencies,** to [administer] **conduct** examinations
15 for **some or** all positions[, in accordance with rules adopted by the board] **or job**
16 **classes.** When such [a request] **action** is [approved] **taken,** the director[, in
17 accordance with rules established by the board, shall] **may** establish standards
18 and guidelines to be followed.

19 [3. Pursuant to rules promulgated by the board, appointing authorities
20 may request that the division of personnel administer promotional examinations
21 limited to those already employed by the state or within the department or
22 division of service involved.

23 4. All examinations conducted by the director shall be conducted in a
24 location which is fully accessible to persons with disabilities or if such a facility
25 is not available in a given location for such regular examinations, a special
26 examination will be arranged upon request of an applicant with a disability in a
27 facility which is fully accessible.]

36.180. 1. [The standards of education or experience in the classification
2 plan for each class shall be established on the basis of specified knowledge, skills
3 and abilities. Admission to examinations shall be open to all persons who possess
4 the qualifications and who may be lawfully appointed to a position in the class
5 for which a register is to be established. The regulations may also require that

6 applicants achieve at least a satisfactory grade in each progressive part of the
7 examination in order to be admitted to subsequent parts of the examination or
8 to receive a final passing score.

9 2. To ensure competitive equality between the hearing impaired or the
10 blind and persons not so disabled, the applicant may request from the director
11 the furnishing of a certified interpreter for the hearing impaired or an
12 amanuensis or a reader for the blind when necessary, and the furnishing of a
13 place to take such examination, or such other similar prerequisites to ensure
14 equality in such examination.

15 **3.] All examinations conducted by the director or an appointing**
16 **authority shall be accessible to persons with disabilities.**

17 **2. A qualified applicant with a disability needing reasonable**
18 **accommodations may request said accommodations to participate in the**
19 **application process for positions subject to this chapter pursuant to**
20 **subsection 1 of section 36.030 and those positions subject to this section**
21 **pursuant to section 36.031. The director or the appointing authority**
22 **filling the particular position shall provide reasonable accommodations**
23 **to such.**

24 **3.** The director may reject the application of any person for admission to
25 an examination, strike the name of any person from the register, refuse to certify
26 the name of any person, or withdraw the certification of a person if the director
27 finds that the person lacks any of the qualifications, has been convicted of a crime
28 which raises questions about his or her qualifications, has been dismissed from
29 the public service for delinquency, has made a false statement of a material fact
30 or practiced or attempted to practice any fraud or deception, in his or her
31 application or examination or in attempting to secure appointment.

32 4. [The director may take such action as is authorized in subsection 3 of
33 this section if the director finds the person has a health condition or disability
34 which would clearly prohibit the person from performing the duties required for
35 the position for which the applicant has applied] **The application, application**
36 **materials, examination papers, and any other document related to the**
37 **selection process shall not be considered a public record, as that term**
38 **is defined under section 610.010.**

36.190. 1. [The director shall give] **Appropriate public notice [of] shall**
2 **be given for** each [open competitive and promotional examination] **class or**
3 **position subject to this chapter pursuant to subsection 1 of section**

4 **36.030** sufficiently in advance [of such examination] and sufficiently widespread
5 in scope to afford **qualified** persons who are interested [in participating in the
6 examination] a reasonable opportunity to apply. [The time elapsing between the
7 official announcement of an examination and the holding of such examination
8 shall be not less than two calendar weeks, except that a lesser period of advance
9 notice may be permissible under the regulations when the examination is
10 conducted under the provisions of subsection 3 of section 36.320 or when the
11 needs of the service pursuant to subsection 1 of section 36.260 require special
12 notices.]

13 2. Each [official] **public** notice of an examination **for a class or**
14 **position subject to this chapter pursuant to subsection 1 of section**
15 **36.030** shall state the title, duties, pay and qualifications of [positions for which
16 the examination is to be held;] **the class or position**, the time, place, and
17 manner of making application [for admission to such examination;], and any
18 other information which [the director considers] **may be considered** pertinent
19 and useful.

20 [3. The director shall ensure that the official announcement of an
21 examination is given the widest distribution necessary to inform qualified persons
22 that the examination is being given. The director may use any means that the
23 director considers necessary to inform qualified persons about the
24 examination. These include, but are not limited to, paid advertisements in
25 newspapers, periodicals, electronic media and announcements to educational
26 institutions. The director may also publish a periodic bulletin containing
27 information about examinations to be sent to subscribers at a price approximating
28 the cost of publication.]

 36.200. The methods for [rating the various parts of the examinations and
2 the minimum satisfactory grade] **evaluating the qualifications of each**
3 **applicant for a position subject to this chapter pursuant to subsection**
4 **1 of section 36.030** shall be determined by the [regulations. Each person who
5 takes any examination shall be given written notice as to whether he passed or
6 failed the examination, and he shall be entitled to inspect his ratings and
7 examination papers, but examination papers shall not be open to the general
8 public. A manifest error in rating an examination which affects the relative
9 ranking of persons shall be corrected if called to the attention of the director
10 within thirty days after the establishment of the register, but such correction
11 shall not invalidate any appointment previously made from such a register unless

12 it is established that the error was made in bad faith and with intent to deprive
13 a person of certification] **appointing authority.**

36.220. 1. In any competitive examination [given] for the purpose of
2 establishing a register of eligibles, veterans, disabled veterans, surviving spouses
3 and spouses of disabled veterans shall be given preference [in appointment and
4 examination in the following manner:

5 (1) A veteran, or the surviving spouse of any veteran whose name appears
6 on a register of eligibles who made a passing grade, shall have five points added
7 to his or her final grade, and his or her rank on the register shall be determined
8 on the basis of this augmented grade.

9 (2) The spouse of a disabled veteran, whose name appears on a register
10 of eligibles and who made a passing grade, shall have five points added to his or
11 her final grade, and his or her rank on the register shall be determined on the
12 basis of this augmented grade. This preference shall be given only if the veteran
13 is not employed in the state service and the disability renders him or her
14 unqualified for entrance into the state service.

15 (3) A disabled veteran, whose name appears on a register of eligibles and
16 who made a passing grade, shall have ten points added to his or her final grade,
17 and his or her rank on the register shall be determined on the basis of this
18 augmented grade]. **A veteran, or the surviving spouse of a veteran, a
19 disabled veteran, or the spouse of a disabled veteran shall be given
20 preference in appointment to a position subject to this chapter
21 pursuant to subsection 1 of section 36.030 over other eligibles if all
22 other relevant job-related factors are equal.**

23 2. Any person who has been honorably discharged from the Armed Forces
24 of the United States shall receive appropriate credit for any training or
25 experience gained therein in any examination if the training or experience is
26 related to the duties of the class of positions for which the examination is given.

36.225. 1. In any competitive examination given for the purpose of
2 establishing a register of eligibles, a parental preference shall be given to persons
3 who were previously employed by the state but terminated such employment to
4 care for young children. This preference shall be given only for persons who were
5 full-time homemakers and caretakers of children under the age of ten and were
6 not otherwise gainfully employed for a period of at least two years.

7 2. [If the name of a person eligible for a parental preference appears on
8 a register of eligibles who made a passing grade, such person shall have five

9 points added to the final grade, and the rank of such person on the register shall
10 be determined on the basis of this augmented grade.] **Applicants entitled to**
11 **parental preference shall be given such preference in appointments**
12 **over other eligibles, excluding applicants eligible for a veteran's**
13 **preference, if all other relevant job-related factors are equal.**

36.240. 1. [Whenever] An appointing authority [proposes to] **may** fill one
2 or more vacancies [in a class of] **for** positions subject to this chapter[, the
3 appointing authority shall submit] **pursuant to subsection 1 of section**
4 **36.030 by submitting** to the director, as far in advance of the desired
5 appointment date as possible, a requisition for the certification of eligible persons
6 from an appropriate register. The requisition shall contain information as
7 required by the director. The appointing authority, subject to conditions specified
8 in the regulations, may also designate special requirements of domicile or the
9 possession of special skills. If the director finds that such requirements would
10 contribute substantially to effective performance of the duties involved,
11 certification may be limited to persons on the register who meet such
12 requirements.

13 2. [When vacancies to be filled are in a class from which employees have
14 been laid off, or demoted in lieu of layoff, certification shall be limited to previous
15 employees until all employees of a division of service on the appropriate
16 reinstatement register have been reinstated in order of rank on the
17 register. Thereafter, certification from reinstatement and other registers shall
18 be in accordance with the provisions of this section and the regulations of the
19 board.

20 3.] Upon a request for certification, the director shall certify for selection
21 [the names of the top fifteen ranking available eligibles or] the names of available
22 eligibles [comprising the top ranking fifteen percent of available eligibles,
23 whichever is greater, plus such additional eligibles as have a final rating equal
24 to that of the last certified eligible. Upon request of the appointing authority, the
25 director may also certify, for each additional vacancy to be filled from the same
26 certification, the next five ranking available eligibles plus such additional
27 eligibles as have a final rating equal to that of the last certified eligible.

28 4. If the director finds that the nature of the examination process and the
29 type of positions involved justify alternative procedures for filling vacancies, the
30 board may by rule prescribe such procedures which may include certification by
31 broad category of examination rating or within a specified range of scores].

32 [5.] 3. When a position [in divisions of the service] subject to this chapter
33 **pursuant to subsection 1 of section 36.030** is limited in duration,
34 [certification may be limited to the highest ranking] **the director may certify**
35 **any** eligible who will accept employment under such conditions. A person
36 appointed to a position under such conditions shall [retain his or her relative
37 position] **remain** on the register and shall be eligible for certification to a
38 permanent position [in the regular order] until the register itself has expired. [If
39 a temporary position is limited to less than ninety calendar days' duration, the
40 appointing authority may fill the position by temporary appointment in the
41 manner provided in section 36.270.

42 6. The rules shall prescribe the conditions under which the name of an
43 eligible who has been certified to and considered for appointment by an
44 appointing authority but has not been appointed may be withheld from further
45 certification to such appointing authority. The eligible shall be entitled to retain
46 his or her place on the eligible register during the life of the register, and shall
47 be certified in the order of his or her rank to other vacancies in the class under
48 other appointing authorities.

49 7. Eligibles who are not available for appointment when offered
50 certification shall be granted a waiver of certification upon their request.]

51 4. Eligibles who do not respond within a reasonable period to a notice of
52 certification may at the discretion of the director be dropped from the eligible
53 register.

54 [8. Any person who has obtained regular status in a class of positions
55 subject to subsection 1 of section 36.030 and who has resigned from state service
56 in good standing or who has accepted demotion or transfer for personal reasons
57 may be reemployed without competitive certification in the same or comparable
58 class at the discretion of the appointing authority and under conditions specified
59 in the regulations. Any person who has successfully served at least one year in
60 a position not subject to subsection 1 of section 36.030, but which is subject to
61 section 36.031, and who has resigned from state service in good standing or who
62 has accepted demotion or transfer for personal reasons, may be reemployed
63 without competitive certification in the same or comparable class at the discretion
64 of the appointing authority and under conditions specified in the regulations,
65 provided he or she possesses the qualifications and has successfully completed a
66 noncompetitive examination for the class involved. No one shall be reemployed
67 pursuant to this section until reinstatement has first been offered to all eligibles

68 on the reinstatement register for the class and division of service involved.

69 9. Preference in certification and appointment from promotional registers
70 or registers of eligibles under conditions specified in the regulations, may be
71 given to employees of the division of service in which the vacancy occurs.]

36.250. 1. Every person appointed to a permanent position [subject to
2 this chapter] **described under subdivision (2) of subsection 1 of section**
3 **36.030** shall be required to successfully complete a working test during a
4 probationary period which shall be of sufficient length to enable the appointing
5 authority to observe the employee's ability to perform the various duties
6 pertaining to the position.

7 2. The board shall by regulation establish the standards governing normal
8 length of the probationary period for different classes of positions. The
9 regulations shall specify the criteria for reducing or lengthening the probationary
10 period for individuals within the various classes. The minimum probationary
11 period shall be three months. The maximum probationary period shall be
12 eighteen months for top professional personnel and personnel with substantial
13 supervisory or administrative responsibilities, and twelve months for all
14 others. However, a probationary period shall not be required for an employee
15 reinstated within two years after layoff or demotion in lieu of layoff by the same
16 division of service.

17 3. Prior to the expiration of an employee's probationary period, the
18 appointing authority shall notify the director and the employee in writing
19 whether the services of the employee have been satisfactory and whether the
20 appointing authority will continue the employee in the employee's position. [No
21 employee shall be paid for work performed after the expiration of the employee's
22 probationary period unless the appointing authority has notified the director and
23 the employee that the employee will be given a regular appointment or, if
24 applicable, have the probationary period extended.]

25 4. At any time during the probationary period the appointing authority
26 may remove an employee if, in the opinion of the appointing authority, the
27 working test indicates that the employee is unable or unwilling to perform the
28 duties of the position satisfactorily. Upon removal, the appointing authority shall
29 forthwith report to the director and to the employee removed, in writing, the
30 appointing authority's action and the reason thereof. [No more than three
31 employees shall be removed successively from the same position during their
32 probationary periods without the approval of the director.] An employee who is

33 found by the director to have been appointed through fraud shall be removed
34 within ten days of notification of the appointing authority.

35 [5. If an employee is removed from the employee's position during, or at
36 the end of, the employee's probationary period, and the director determines that
37 the employee is suitable for appointment to another position, the employee's name
38 shall be restored to the register from which it was certified. An employee
39 appointed from a promotional register who does not successfully complete the
40 employee's probationary period shall, if otherwise eligible for retention in
41 employment, be reinstated in a position in the class occupied by the employee
42 immediately prior to the employee's promotion or in a comparable class.]

36.280. [1.] An appointing authority may at any time assign [an
2 employee] **a person employed in a position described under subsection**
3 **1 of section 36.030 or a person employed in a position in a department**
4 **or agency of the executive branch of state government not exempted**
5 **from section 36.031** from one position to another position in the same class in
6 the appointing authority's division[; except that, transfers of employees made
7 because of a layoff, or shortage of work or funds which might require a layoff,
8 shall be governed by the regulations. Upon making such an assignment the
9 appointing authority shall forthwith give written notice of the appointing
10 authority's action to the director]. A transfer of an employee from a position in
11 one division to a position in the same class in another division may be made with
12 the approval of [the director and of] the appointing authorities of both
13 divisions. [No employee shall be transferred from a position in one class to a
14 position in another class of a higher rank or for which there are substantially
15 dissimilar requirements for appointment unless the employee is appointed to such
16 latter position after certification of the employee's name from a register in
17 accordance with the provisions of this chapter. Any change of an employee from
18 a position in one class to a position in a class of lower rank shall be considered
19 a demotion and shall be made only in accordance with the procedure prescribed
20 by section 36.380 for cases of dismissal. An employee thus involuntarily demoted
21 shall have the right to appeal to the administrative hearing commission pursuant
22 to section 36.390.] **Upon making either such assignment the transferring**
23 **appointing authority shall forthwith give written notice of the**
24 **appointing authority's action to the director.**

25 [2. An employee who has successfully served at least one year in a
26 position not subject to subsection 1 of section 36.030, but which is subject to

27 section 36.031, may be transferred to a position subject to subsection 1 of section
28 36.030 in the same class with the approval of the director and of the appointing
29 authorities of both divisions, provided he or she possesses the qualifications and
30 has successfully completed a noncompetitive examination for the position
31 involved.]

36.320. 1. The director [shall] **may** establish and maintain such
2 promotional registers and registers of eligibles for the various [classes of
3 positions] **locations or divisions of service** subject to this chapter **pursuant**
4 **to subsection 1 of section 36.030** as the director deems necessary or desirable
5 to meet the needs of the service. [On each promotional register and register of
6 eligibles, the eligibles shall be ranked in the order of their ratings given for the
7 purpose of establishing or replenishing such a register.]

8 2. The time during which a promotional register or register of eligibles
9 remains in force shall be [one year from the date on which it is officially
10 established by the director; except that, before the expiration of a register, the
11 director may by order extend the time during which such register remains in force
12 when the needs of the service so require. In no event shall the total period
13 during which a register is in force exceed three years from the date on which the
14 register was originally established] **determined by the director so as to best**
15 **meet the needs of the service**. The director may consolidate or cancel
16 promotional registers and registers of eligibles as the needs of the service
17 require[, and as authorized by the regulations].

18 3. In circumstances where there is a continuous need for substantial
19 numbers of eligibles for a certain class of positions, the director may, after first
20 establishing such a register, replenish the register from time to time by inserting
21 the names of additional eligibles who are found to be qualified on the basis of
22 determinations similar to those used as a basis for establishing the original
23 register. The method for establishing, replenishing, and cancelling such a
24 register [shall] **may** be determined by the regulations.

36.340. In cooperation with appointing authorities the director [shall]
2 **may** establish a system of service reports[, which shall]. **Such service reports,**
3 **if any, may** take into consideration, among other things, the employee's conduct,
4 performance, and output. In such manner and with such weight as shall be
5 provided in the regulations, ratings assigned to such service reports [shall] **may**
6 be considered in determining salary increases and decreases within the limits
7 established by law and by the pay plan; as a factor in promotional [examinations]

8 **decisions**; as a factor in determining [the order of layoff when forces must be
9 reduced because of lack of work or funds, and the order in which names are to be
10 placed on reinstatement registers; and as a means of discovering] employees who
11 should be demoted, transferred or dismissed. In such manner and at such time
12 as the regulations may require, each appointing authority shall report to the
13 director on the services of employees in his **or her** division. Any employee shall
14 be given reasonable opportunity to inspect the records of the department which
15 show the ratings assigned to his **or her** service reports.

36.380. An appointing authority may dismiss for cause any **regular**
2 employee in his **or her** division [occupying a position subject hereto] when he **or**
3 **she** considers that such action is required in the interests of efficient
4 administration and that the good of the service will be served thereby. No
5 dismissal of a regular employee shall take effect unless, prior to the effective date
6 thereof, the appointing authority gives to such employee a written statement
7 **notifying the employee of the decision and** setting forth in substance the
8 reason therefor [and files a copy of such statement with the director]. When it
9 is not practicable to give the notice of dismissal to an employee in person, it may
10 be sent to the employee by certified or registered mail, return receipt requested,
11 at his **or her** last mailing address as shown in the personnel records of the
12 appointing authority. Proof of refusal of the employee to accept delivery or the
13 inability of postal authorities to deliver such mail shall be accepted as evidence
14 that the required notice of dismissal has been given. [If the director determines
15 that the statement of reasons for the dismissal given by the appointing authority
16 shows that such dismissal does not reflect discredit on the character or conduct
17 of the employee, he may, upon request of the employee, approve reemployment
18 under section 36.240, in any class in which the employee has held regular status.]
19 Any regular employee who is dismissed shall have the right to appeal to the
20 administrative hearing commission as provided under section 36.390.

36.390. 1. [An applicant whose request for admission to any examination
2 has been rejected by the director may appeal to the administrative hearing
3 commission in writing within fifteen days of the mailing of the notice of rejection
4 by the director, and in any event before the holding of the examination. The
5 commission's decision on all matters of fact shall be final.

6 2. Applicants may be admitted to an examination pending a consideration
7 of the appeal, but such admission shall not constitute the assurance of a passing
8 grade in education and experience.

9 3.] Any applicant [who has taken an examination and] **for a position**
10 **subject to this chapter pursuant to subsection 1 of section 36.030** who
11 feels that he or she has not been dealt with fairly in any phase of the examination
12 process may request that the director review his or her case. Such request for
13 review of any examination shall be filed in writing with the director within fifteen
14 days after the date on which notification of the results of the examination was
15 [mailed] **sent** to the applicant. A candidate may appeal the decision of the
16 director in writing to the administrative hearing commission. This appeal shall
17 be filed with the administrative hearing commission within fifteen days after date
18 on which notification of the decision of the director was [mailed] **sent** to the
19 applicant. The commission's decision with respect to any changes shall be final,
20 and shall be entered in the minutes. [A correction in the rating shall not affect
21 a certification or appointment which may have already been made from the
22 register.

23 4. An eligible whose name has been removed from a register for any of the
24 reasons specified in section 36.180 or in section 36.240 may appeal to the
25 administrative hearing commission for reconsideration. Such appeal shall be filed
26 in writing with the administrative hearing commission within fifteen days after
27 the date on which notification was mailed to the eligible. The commission, after
28 investigation, shall make its decision which shall be recorded in the minutes and
29 the eligible shall be notified accordingly by the director.

30 5.] **2.** Any regular employee who is dismissed or involuntarily demoted for
31 cause or suspended for more than five working days may appeal in writing to the
32 administrative hearing commission within thirty days after the effective date
33 thereof, setting forth in substance the employee's reasons for claiming that the
34 dismissal, suspension or demotion was for political, religious, or racial reasons,
35 or not for the good of the service.

36 [6. The provisions for appeals provided in subsection 5 of this section for
37 dismissals of regular merit employees may be adopted by nonmerit agencies of the
38 state for any or all employees of such agencies.

39 7. Agencies not adopting the provisions for appeals provided in subsection
40 5 of this section shall adopt dismissal procedures substantially similar to those
41 provided for merit employees. However, these procedures need not apply to
42 employees in policy-making positions, or to members of military or law
43 enforcement agencies.

44 8.] **3.** Hearings under **subsection 2 of** this section shall be deemed to be

45 a contested case and the procedures applicable to the processing of such hearings
46 and determinations shall be those established by chapter 536. Decisions of the
47 administrative hearing commission shall be final and binding subject to appeal
48 by either party. Final decisions of the administrative hearing commission
49 pursuant to this subsection shall be subject to review on the record by the circuit
50 court pursuant to chapter 536.

36.400. The administrative hearing commission[,] **and** each commissioner
2 [and the director] shall have power to administer oaths, subpoena witnesses, and
3 compel the production of books and papers pertinent to any investigation or
4 hearing authorized by this [law] **chapter**. Any person who shall fail to appear
5 in response to a subpoena or to answer any question or produce any books or
6 papers pertinent to any such investigation or hearing, or who shall knowingly
7 give false testimony therein, shall be guilty of a misdemeanor.

36.440. 1. All officers and employees of the state [under the] **subject to**
2 provisions of this chapter, **whether pursuant to subsection 1 of section**
3 **36.030 or pursuant to section 36.031**, shall comply with and aid in all proper
4 ways in carrying out the provisions of this chapter **applicable to them** and the
5 regulations adopted thereunder. All officers and employees shall furnish any
6 records or information which the director or the board may request for any
7 purpose of this law.

2. A state officer or employee [under the provisions of this chapter] who
9 shall fail to comply with any provision of this chapter or of any regulation
10 adopted thereunder **that is applicable to such person** shall be subject to all
11 penalties and remedies now or hereafter provided by law for the failure of a
12 public officer or employee to do any act required of him **or her** by [law] **this**
13 **chapter**. The director may maintain such action or proceeding at law or in
14 equity as he **or she** considers necessary or appropriate to secure compliance with
15 this [law] **chapter** and the regulations adopted thereunder.

36.510. 1. In addition to other duties specified elsewhere in this chapter[,
2 it shall be the duty of] the director [to] **may** perform the following functions in
3 **some or** all agencies of state government:

4 (1) Develop, initiate and implement a central training program for
5 personnel in agencies of state government and encourage and assist in the
6 development of such specialized training activities as can best be administered
7 internally by such individual agencies;

8 (2) Establish a management trainee program and prescribe rules for the

- 9 establishment of a career executive service for the state;
- 10 (3) Formulate for approval of the board regulations regarding mandatory
11 training for persons employed in management positions in state agencies;
- 12 (4) Institute, coordinate and direct a statewide program for recruitment
13 of personnel in cooperation with appointing authorities in state agencies;
- 14 (5) Assist all state departments in setting productivity goals and in
15 implementing a standard system of performance appraisals;
- 16 (6) Establish and direct a central labor relations function for the state
17 which shall coordinate labor relations activities in individual state agencies,
18 including participation in negotiations and approval of agreements relating to
19 uniform wages, benefits and those aspects of employment which have fiscal
20 impact on the state; and
- 21 (7) Formulate rules for approval of the board and establish procedures
22 and standards relating to position classification and compensation of employees
23 which are designed to secure essential uniformity and comparability among state
24 agencies.

25 2. Any person who is employed in a position subject to [merit system
26 regulations and] **this chapter** who engaged in a strike or labor stoppage shall
27 be subject to the penalties provided by law.

37.010. 1. The governor, by and with the advice and consent of the
2 senate, shall appoint a commissioner of administration, who shall head the
3 "Office of Administration" which is hereby created. The commissioner of
4 administration shall receive a salary as provided by law and shall also receive his
5 or her actual and necessary expenses incurred in the discharge of his or her
6 official duties. Before taking office, the commissioner of administration shall take
7 and subscribe an oath or affirmation to support the Constitution of the United
8 States and of this state, and to demean himself or herself faithfully in office. The
9 commissioner shall also deposit with the governor a bond, with sureties to be
10 approved by the governor, in the amount to be determined by the governor
11 payable to the state of Missouri, conditioned on the faithful performance of the
12 duties of his or her office. The premium of this bond shall be paid out of the
13 appropriation for the office of the governor.

14 2. The governor shall appoint the commissioner of administration with the
15 advice and consent of the senate. The commissioner shall be at least thirty years
16 of age and must have been a resident and qualified voter of this state for the five
17 years next preceding his **or her** appointment. He or she [must] **shall** be

18 qualified by training and experience to assume the managerial and
19 administrative functions of the office of commissioner of administration.

20 3. The commissioner of administration shall, by virtue of his or her office,
21 without additional compensation, head the division of budget, the division of
22 purchasing, the division of facilities management, design and construction, and
23 the information technology services division. Whenever provisions of the
24 constitution grant powers, impose duties or make other reference to the
25 comptroller, they shall be construed as referring to the commissioner of
26 administration.

27 4. The commissioner of administration shall provide the governor with
28 such assistance in the supervision of the executive branch of state government as
29 the governor requires and shall perform such other duties as are assigned to him
30 or her by the governor or by law. The commissioner of administration shall work
31 with other departments of the executive branch of state government to promote
32 economy, efficiency and improved service in the transaction of state
33 business. The commissioner of administration, with the approval of the governor,
34 shall organize the work of the office of administration in such manner as to
35 obtain maximum effectiveness of the personnel of the office. He or she may
36 consolidate, abolish or reassign duties of positions or divisions combined within
37 the office of administration, except for the division of personnel. He or she may
38 delegate specific duties to subordinates. These subordinates shall take the same
39 oath as the commissioner and shall be covered by the bond of the director or by
40 separate bond as required by the governor.

41 5. The personnel division, personnel director and personnel advisory board
42 as provided in chapter 36 shall be in the office of administration. The personnel
43 director and employees of the personnel division shall perform such duties as
44 directed by the commissioner of administration for personnel work in agencies
45 and departments of state government [not covered by the merit system law] to
46 upgrade state employment and to improve the uniform quality of state
47 employment.

48 6. The commissioner of administration shall prepare a complete inventory
49 of all real estate, buildings and facilities of state government and an analysis of
50 their utilization. Each year he or she shall formulate and submit to the governor
51 a long-range plan for the ensuing five years for the repair, construction and
52 rehabilitation of all state properties. The plan shall set forth the projects
53 proposed to be authorized in each of the five years with each project ranked in the

54 order of urgency of need from the standpoint of the state as a whole and shall be
55 upgraded each year. Project proposals shall be accompanied by workload and
56 utilization information explaining the need and purpose of each. Departments
57 shall submit recommendations for capital improvement projects and other
58 information in such form and at such times as required by the commissioner of
59 administration to enable him or her to prepare the long-range plan. The
60 commissioner of administration shall prepare the long-range plan together with
61 analysis of financing available and suggestions for further financing for approval
62 of the governor who shall submit it to the general assembly. The long-range plan
63 shall include credible estimates for operating purposes as well as capital outlay
64 and shall include program data to justify need for the expenditures included. The
65 long-range plan shall be extended, revised and resubmitted in the same manner
66 to accompany each executive budget. The appropriate recommendations for the
67 period for which appropriations are to be made shall be incorporated in the
68 executive budget for that period together with recommendations for
69 financing. Each revised long-range plan shall provide a report on progress in the
70 repair, construction and rehabilitation of state properties and of the operating
71 purposes program for the preceding fiscal period in terms of expenditures and
72 meeting program goals.

73 7. [All employees of the office of administration, except the commissioner
74 and not more than three other executive positions designated by the governor in
75 an executive order, shall be subject to the provisions of chapter 36. The
76 commissioner shall appoint all employees of the office of administration and may
77 discharge the employees after proper hearing, provided that the employment and
78 discharge conform to the practices governing selection and discharge of employees
79 in accordance with the provisions of chapter 36.

80 8.] The office of the commissioner of administration shall be in Jefferson
81 City.

82 [9.] 8. In case of death, resignation, removal from office or vacancy from
83 any cause in the office of commissioner of administration, the governor shall take
84 charge of the office and superintend the business thereof until a successor is
85 appointed, commissioned and qualified.

105.055. 1. No supervisor or appointing authority of any state agency
2 shall prohibit any employee of the agency from discussing the operations of the
3 agency, either specifically or generally, with any member of the legislature, state
4 auditor, attorney general, or any state official or body charged with investigating

5 such alleged misconduct.

6 2. No supervisor or appointing authority of any state agency shall:

7 (1) Prohibit a state employee from or take any disciplinary action
8 whatsoever against a state employee for the disclosure of any alleged prohibited
9 activity under investigation or any related activity, or for the disclosure of
10 information which the employee reasonably believes evidences:

11 (a) A violation of any law, rule or regulation; or

12 (b) Mismanagement, a gross waste of funds or abuse of authority, or a
13 substantial and specific danger to public health or safety, if the disclosure is not
14 specifically prohibited by law; or

15 (2) Require any such employee to give notice to the supervisor or
16 appointing authority prior to making any such report.

17 3. This section shall not be construed as:

18 (1) Prohibiting a supervisor or appointing authority from requiring that
19 an employee inform the supervisor or appointing authority as to legislative
20 requests for information to the agency or the substance of testimony made, or to
21 be made, by the employee to legislators on behalf of the employee to legislators
22 on behalf of the agency;

23 (2) Permitting an employee to leave the employee's assigned work areas
24 during normal work hours without following applicable rules and regulations and
25 policies pertaining to leaves, unless the employee is requested by a legislator or
26 legislative committee to appear before a legislative committee;

27 (3) Authorizing an employee to represent the employee's personal opinions
28 as the opinions of a state agency; or

29 (4) Restricting or precluding disciplinary action taken against a state
30 employee if: the employee knew that the information was false; the information
31 is closed or is confidential under the provisions of the open meetings law or any
32 other law; or the disclosure relates to the employee's own violations,
33 mismanagement, gross waste of funds, abuse of authority or endangerment of the
34 public health or safety.

35 4. As used in this section, "disciplinary action" means any dismissal,
36 demotion, transfer, reassignment, suspension, reprimand, warning of possible
37 dismissal or withholding of work, whether or not the withholding of work has
38 affected or will affect the employee's compensation.

39 5. Any employee may file an administrative appeal whenever the
40 employee alleges that disciplinary action was taken against the employee in

41 violation of this section. The appeal shall be filed with the administrative
42 hearing commission[]; provided that the appeal shall be filed with the appropriate
43 agency review board or body of nonmerit agency employers which have
44 established appeal procedures substantially similar to those provided for merit
45 employees in subsection 5 of section 36.390]. The appeal shall be filed within
46 thirty days of the alleged disciplinary action. Procedures governing the appeal
47 shall be in accordance with chapter 536. If the commission or appropriate review
48 body finds that disciplinary action taken was [unreasonable] **taken for any**
49 **reason that violates this section**, the commission or appropriate review body
50 shall modify or reverse the agency's action and order such relief for the employee
51 as the commission considers appropriate. If the commission finds a violation of
52 this section, it may review and recommend to the appointing authority that the
53 violator be suspended on leave without pay for not more than thirty days or, in
54 cases of willful or repeated violations, may review and recommend to the
55 appointing authority that the violator forfeit the violator's position as a state
56 officer or employee and disqualify the violator for appointment to or employment
57 as a state officer or employee for a period of not more than two years. The
58 decision of the commission or appropriate review body in such cases may be
59 appealed by any party pursuant to law.

60 6. Each state agency shall prominently post a copy of this section in
61 locations where it can reasonably be expected to come to the attention of all
62 employees of the agency.

63 7. (1) In addition to the remedies in subsection [6] 5 of this section, a
64 person who alleges a violation of this section may bring a civil action for damages
65 within ninety days after the occurrence of the alleged violation.

66 (2) A civil action commenced pursuant to this subsection may be brought
67 in the circuit court for the county where the alleged violation occurred, the county
68 where the complainant resides, or the county where the person against whom the
69 civil complaint is filed resides.

70 (3) An employee must show by clear and convincing evidence that he or
71 she or a person acting on his or her behalf has reported or was about to report,
72 verbally or in writing, a prohibited activity or a suspected prohibited activity.

73 (4) A court, in rendering a judgment in an action brought pursuant to this
74 section, shall order, as the court considers appropriate, actual damages, and may
75 also award the complainant all or a portion of the costs of litigation, including
76 reasonable attorney fees.

207.085. 1. Any employee of the children's division, including supervisory
2 personnel and private contractors with the division, who is involved with child
3 protective services and purposely, knowingly, and willfully violates a stated or
4 written policy of the division, any rule promulgated by the division, or any state
5 law directly related to the child abuse and neglect activities of the division shall
6 be dismissed if the violation directly results in serious physical injury or death,
7 subject to the provisions of subsection 2 of this section. [The provisions of this
8 section shall apply to merit system employees of the division, as well as all other
9 employees of the division and private contractors with the division, and upon a
10 showing of a violation, such employees shall be dismissed for cause, subject to the
11 provisions of subsection 2 of this section, and] **Any person employed in a**
12 **position described under subdivision (2) of subsection 1 of section**
13 **36.030, if any,** shall have the right of appeal pursuant to sections 36.380 and
14 36.390. For purposes of this section, a "private contractor with the division"
15 means any private entity or community action agency with the appropriate and
16 relevant training and expertise in delivering services to children and their
17 families as determined by the children's division, and capable of providing direct
18 services and other family services for children in the custody of the children's
19 division or any such entities or agencies that are receiving state moneys for such
20 services.

21 2. The provisions of sections 660.019 to 660.021 shall apply to this section.
22 If an employee of the division or a private contractor with the division is
23 responsible for caseload assignments in excess of those required to attain
24 accreditation by the Council for Accreditation for Families and Children's
25 Services, and the employee purposely, knowingly, and willfully violates a stated
26 or written policy of the division, any rule promulgated by the division, or any
27 state law directly related to the child abuse and neglect activities of the division
28 and the violation directly results in serious physical injury or death, the
29 employee's good faith efforts to follow the stated or written policies of the
30 division, the rules promulgated by the division, or the state laws directly related
31 to the child abuse and neglect activities of the division shall be a mitigating
32 factor in determining whether an employee of the division or a private contractor
33 with the division is dismissed pursuant to subsection 1 of this section.

621.075. 1. [Except as otherwise provided by law,] Any [employee with
2 merit status] **person employed in a position described under subdivision**
3 **(2) of subsection 1 of section 36.030** who has been dismissed or involuntarily

4 demoted for cause or suspended for more than five working days shall have the
5 right to appeal to the administrative hearing commission. Any such person shall
6 be entitled to a hearing before the administrative hearing commission by the
7 filing of an appeal setting forth in substance the employee's reasons for claiming
8 that the dismissal, suspension, or demotion was for political, religious, or racial
9 reasons, or not for the good of the service with the administrative hearing
10 commission within thirty days after the effective date of the action. The decision
11 of the appointing authority shall contain a notice of the right of appeal in
12 substantially the following language:

13 "Any employee with regular status who has been dismissed or
14 involuntarily demoted for cause or suspended for more than five
15 working days may appeal to the administrative hearing
16 commission. To appeal, you must file an appeal with the
17 administrative hearing commission within thirty days after the
18 effective date of the decision. If any such appeal is sent by
19 registered mail or certified mail, it will be deemed filed on the date
20 it is mailed; if it is sent by any method other than registered mail
21 or certified mail, it will be deemed filed on the date it is received
22 by the commission."

23 2. The procedures applicable to the processing of such hearings and
24 determinations shall be those established by chapter 536. The administrative
25 hearing commission may hold hearings or may make decisions based on
26 stipulation of the parties, consent order, agreed settlement, or by disposition in
27 the nature of default judgment, judgment on the pleadings, or summary
28 determination, in accordance with the rules and procedures of the administrative
29 hearing commission. No hearing shall be public unless requested to be public by
30 the employee. The administrative hearing commission shall maintain a
31 transcript of all testimony and proceedings in hearings governed by this section,
32 and decisions of the administrative hearing commission under this section shall
33 be binding subject to appeal by either party. The administrative hearing
34 commission may make any one of the following appropriate orders:

35 (1) Order the reinstatement of the employee to the employee's former
36 position; **or**

37 (2) Sustain the dismissal of such employee[;]

38 (3) Except as provided in subdivisions (1) and (2) of this subsection, the
39 administrative hearing commission may sustain the dismissal, but may order the

40 director of personnel to recognize reemployment rights for the dismissed employee
41 pursuant to section 36.240, in an appropriate class or classes, or may take steps
42 to effect the transfer of such employee to an appropriate position in the same or
43 another division of service].

44 3. After an order of reinstatement has been issued and all parties have
45 let the time for appeal lapse or have filed an appeal and that appeal process has
46 become final and the order of reinstatement has been affirmed, the administrative
47 hearing commission shall commence a separate action to determine the date of
48 reinstatement and the amount of back pay owed to the employee. This action
49 may be done by hearing, or by affidavit, depositions, or stipulations, or by
50 agreement on the amount of back pay owed. No hearing shall be public unless
51 requested to be public by the employee.

630.167. 1. Upon receipt of a report the department or the department
2 of health and senior services, if such facility or program is licensed pursuant to
3 chapter 197, shall initiate an investigation within twenty-four hours. The
4 department of mental health shall complete all investigations within sixty days,
5 unless good cause for the failure to complete the investigation is documented.

6 2. If the investigation indicates possible abuse or neglect of a patient,
7 resident or client, the investigator shall refer the complaint together with the
8 investigator's report to the department director for appropriate action. If, during
9 the investigation or at its completion, the department has reasonable cause to
10 believe that immediate removal from a facility not operated or funded by the
11 department is necessary to protect the residents from abuse or neglect, the
12 department or the local prosecuting attorney may, or the attorney general upon
13 request of the department shall, file a petition for temporary care and protection
14 of the residents in a circuit court of competent jurisdiction. The circuit court in
15 which the petition is filed shall have equitable jurisdiction to issue an ex parte
16 order granting the department authority for the temporary care and protection
17 of the resident for a period not to exceed thirty days.

18 3. (1) Except as otherwise provided in this section, reports referred to in
19 section 630.165 and the investigative reports referred to in this section shall be
20 confidential, shall not be deemed a public record, and shall not be subject to the
21 provisions of section 109.180 or chapter 610. Investigative reports pertaining to
22 abuse and neglect shall remain confidential until a final report is complete,
23 subject to the conditions contained in this section. Final reports of substantiated
24 abuse or neglect issued on or after August 28, 2007, are open and shall be

25 available for release in accordance with chapter 610. The names and all other
26 identifying information in such final substantiated reports, including diagnosis
27 and treatment information about the patient, resident, or client who is the subject
28 of such report, shall be confidential and may only be released to the patient,
29 resident, or client who has not been adjudged incapacitated under chapter 475,
30 the custodial parent or guardian parent, or other guardian of the patient, resident
31 or client. The names and other descriptive information of the complainant,
32 witnesses, or other persons for whom findings are not made against in the final
33 substantiated report shall be confidential and not deemed a public record. Final
34 reports of unsubstantiated allegations of abuse and neglect shall remain closed
35 records and shall only be released to the parents or other guardian of the patient,
36 resident, or client who is the subject of such report, patient, resident, or client
37 and the department vendor, provider, agent, or facility where the patient,
38 resident, or client was receiving department services at the time of the
39 unsubstantiated allegations of abuse and neglect, but the names and any other
40 descriptive information of the complainant or any other person mentioned in the
41 reports shall not be disclosed unless such complainant or person specifically
42 consents to such disclosure. Requests for final reports of substantiated or
43 unsubstantiated abuse or neglect from a patient, resident or client who has not
44 been adjudged incapacitated under chapter 475 may be denied or withheld if the
45 director of the department or his or her designee determines that such release
46 would jeopardize the person's therapeutic care, treatment, habilitation, or
47 rehabilitation, or the safety of others and provided that the reasons for such
48 denial or withholding are submitted in writing to the patient, resident or client
49 who has not been adjudged incapacitated under chapter 475. All reports referred
50 to in this section shall be admissible in any judicial proceedings or hearing in
51 accordance with section 621.075 or any administrative hearing before the director
52 of the department of mental health, or the director's designee. All such reports
53 may be disclosed by the department of mental health to law enforcement officers
54 and public health officers, but only to the extent necessary to carry out the
55 responsibilities of their offices, and to the department of social services, and the
56 department of health and senior services, and to boards appointed pursuant to
57 sections 205.968 to 205.990 that are providing services to the patient, resident or
58 client as necessary to report or have investigated abuse, neglect, or rights
59 violations of patients, residents or clients provided that all such law enforcement
60 officers, public health officers, department of social services' officers, department

61 of health and senior services' officers, and boards shall be obligated to keep such
62 information confidential.

63 (2) Except as otherwise provided in this section, the proceedings, findings,
64 deliberations, reports and minutes of committees of health care professionals as
65 defined in section 537.035 or mental health professionals as defined in section
66 632.005 who have the responsibility to evaluate, maintain, or monitor the quality
67 and utilization of mental health services are privileged and shall not be subject
68 to the discovery, subpoena or other means of legal compulsion for their release to
69 any person or entity or be admissible into evidence into any judicial or
70 administrative action for failure to provide adequate or appropriate care. Such
71 committees may exist, either within department facilities or its agents,
72 contractors, or vendors, as applicable. Except as otherwise provided in this
73 section, no person who was in attendance at any investigation or committee
74 proceeding shall be permitted or required to disclose any information acquired in
75 connection with or in the course of such proceeding or to disclose any opinion,
76 recommendation or evaluation of the committee or board or any member thereof;
77 provided, however, that information otherwise discoverable or admissible from
78 original sources is not to be construed as immune from discovery or use in any
79 proceeding merely because it was presented during proceedings before any
80 committee or in the course of any investigation, nor is any member, employee or
81 agent of such committee or other person appearing before it to be prevented from
82 testifying as to matters within their personal knowledge and in accordance with
83 the other provisions of this section, but such witness cannot be questioned about
84 the testimony or other proceedings before any investigation or before any
85 committee.

86 (3) Nothing in this section shall limit authority otherwise provided by law
87 of a health care licensing board of the state of Missouri to obtain information by
88 subpoena or other authorized process from investigation committees or to require
89 disclosure of otherwise confidential information relating to matters and
90 investigations within the jurisdiction of such health care licensing boards;
91 provided, however, that such information, once obtained by such board and
92 associated persons, shall be governed in accordance with the provisions of this
93 subsection.

94 (4) Nothing in this section shall limit authority otherwise provided by law
95 in subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to
96 records by the entity or agency authorized to implement a system to protect and

97 advocate the rights of persons with developmental disabilities under the
98 provisions of 42 U.S.C. Sections 15042 to 15044 and the entity or agency
99 authorized to implement a system to protect and advocate the rights of persons
100 with mental illness under the provisions of 42 U.S.C. Section 10801. In addition,
101 nothing in this section shall serve to negate assurances that have been given by
102 the governor of Missouri to the U.S. Administration on Developmental
103 Disabilities, Office of Human Development Services, Department of Health and
104 Human Services concerning access to records by the agency designated as the
105 protection and advocacy system for the state of Missouri. However, such
106 information, once obtained by such entity or agency, shall be governed in
107 accordance with the provisions of this subsection.

108 4. Any person who makes a report pursuant to this section or who testifies
109 in any administrative or judicial proceeding arising from the report shall be
110 immune from any civil liability for making such a report or for testifying unless
111 such person acted in bad faith or with malicious purpose.

112 5. (1) Within five working days after a report required to be made
113 pursuant to this section is received, the person making the report shall be
114 notified in writing of its receipt and of the initiation of the investigation.

115 (2) For investigations alleging neglect of a patient, resident, or client, the
116 guardian of such patient, resident, or client shall be notified of:

117 (a) The investigation and given an opportunity to provide information to
118 the investigators;

119 (b) The results of the investigation within five working days of the
120 completion of the investigation and decision of the department of mental health
121 of the results of the investigation.

122 6. The department of mental health shall obtain two independent reviews
123 of all patient, resident, or client deaths that it investigates.

124 7. No person who directs or exercises any authority in a residential
125 facility, day program or specialized service shall evict, harass, dismiss or retaliate
126 against a patient, resident or client or employee because he or she or any member
127 of his or her family has made a report of any violation or suspected violation of
128 laws, ordinances or regulations applying to the facility which he or she has
129 reasonable cause to believe has been committed or has occurred.

130 8. Any person **employed in a position described under subdivision**
131 **(2) of subsection 1 of section 36.030** who is discharged as a result of an
132 administrative substantiation of allegations contained in a report of abuse or

133 neglect may, after exhausting administrative remedies as provided in chapter 36,
134 appeal such decision to the circuit court of the county in which such person
135 resides within ninety days of such final administrative decision. The court may
136 accept an appeal up to twenty-four months after the party filing the appeal
137 received notice of the department's determination, upon a showing that:

138 (1) Good cause exists for the untimely commencement of the request for
139 the review;

140 (2) If the opportunity to appeal is not granted it will adversely affect the
141 party's opportunity for employment; and

142 (3) There is no other adequate remedy at law.

[36.210. Other provision of the law to the contrary
2 notwithstanding, special procedures for the examination and
3 selection of personnel are authorized as follows:

4 (1) For positions involving unskilled or semiskilled labor,
5 or domestic, attendant, custodial or comparable work, when the
6 character or place of the work makes it impracticable to supply the
7 needs of the service by appointments made in accordance with the
8 procedure prescribed in other provisions of this chapter, the
9 director, in accordance with the regulations, shall authorize the use
10 of such other procedures as the director determines to be
11 appropriate in order to meet the needs of the service, while
12 assuring the selection of such employees on the basis of merit and
13 fitness. Such procedures, subject to the regulations, may include
14 the testing of applicants and maintenance of registers of eligibles
15 by localities; the testing of applicants, singly or in groups, at
16 periodic intervals, at the place of employment or elsewhere, after
17 such notice as the director considers adequate; the registration of
18 applicants who pass a noncompetitive examination or submit
19 satisfactory evidence of their qualifications, and appointment of
20 registered applicants; or any variation or combination of the
21 foregoing or other suitable methods. When the director finds
22 noncompetitive registration and selection procedures to be
23 appropriate, the director is hereby authorized to delegate to each
24 appointing authority the responsibility for such registration and for
25 selection and appointment of registered applicants. When such
26 delegation is made, the director shall establish the necessary

27 guidelines and standards for appointing authorities and shall
28 require such reports and perform such audits as the director deems
29 necessary to ensure compliance with these guidelines and
30 standards.

31 (2) The regulations may prescribe the conditions under
32 which interns, trainees, and participants in special state or federal
33 training, rehabilitation, and employment programs who
34 successfully complete a period of internship or training may be
35 appointed to a permanent position subject to this chapter after
36 passing a noncompetitive qualifying examination.

37 (3) The board may, in accordance with the regulations,
38 waive competitive examinations for a class or position if it finds
39 that the supply of qualified applicants is generally insufficient to
40 justify competitive examinations and provide meaningful
41 competition in the selection of employees. A request that
42 competitive examination be waived for a particular class or position
43 pursuant to this provision may be made to the board by the
44 director or an appointing authority. The board shall review
45 determinations pursuant to this provision at least annually. Upon
46 waiving such examinations, the regulations of the board shall
47 provide for the registration and appointment of applicants who
48 present satisfactory evidence of their qualifications.

49 (4) Upon the approval of the director in accordance with the
50 regulations of the board, appointing authorities may promote
51 employees on the basis of a qualifying noncompetitive
52 examination. Such noncompetitive promotions may be approved in,
53 but are not necessarily limited to, situations in which the
54 promotion represents a normal progression to the next higher level
55 within an established occupational job series, or where the director
56 determines that an employee has been an assistant, understudy or
57 trainee for the position involved or otherwise has had such specific
58 experience or training that a noncompetitive promotion to the
59 position in question is to the best interests of the state service.

60 (5) Appointing authorities may request, pursuant to
61 regulations established by the board, to conduct alternative
62 promotional procedures for positions and classes in their divisions

63 of service. The board shall approve such alternative procedures
64 which it finds to be in keeping with merit principles and the best
65 interest of the state service. Upon approval, the appointing
66 authority shall be responsible to conduct promotional procedures
67 in accordance with the board's approval and without favoritism,
68 prejudice or discrimination. The board may withdraw approval
69 pursuant to this provision if it finds that this responsibility has not
70 been met.

71 (6) Where appropriate, the director may establish registers
72 by locality for selected classes.]

[36.260. 1. When an appointing authority finds it essential
2 to fill a vacancy in a position subject to this chapter, and, with at
3 least thirty days' notice of the vacancy, the director is unable to
4 certify the names of at least ten available eligibles, the director
5 may authorize the appointing authority to fill the vacancy by
6 means of a provisional appointment. The appointing authority
7 shall forthwith submit a statement containing the name of a person
8 nominated by the appointing authority for provisional appointment
9 to the position, which statement shall contain a description of the
10 qualifications of training and experience possessed by that person,
11 and such other information as may be required by the regulations.
12 If such nominee is found by the director to possess experience and
13 training which meet the qualifications for the position, the director
14 may approve the provisional appointment.

15 2. No provisional appointment shall be made without the
16 approval of the director.

17 3. The duration of a provisional appointment shall be the
18 same as the duration of the probationary period established for the
19 position. A provisional appointee who successfully completes the
20 working test of the probationary period may receive a regular
21 appointment without examination.]

[36.270. When an emergency makes it necessary to fill a
2 position subject hereto immediately in order to prevent stoppage of
3 public business, or loss, hazard, or serious inconvenience to the
4 public, and it is impracticable to fill such a position under any
5 other provision of this chapter, an appointing authority or a

6 properly authorized subordinate employee may appoint any
7 qualified person to such a position without prior approval of the
8 director. Any such person shall be employed only during such an
9 emergency, and any such appointment shall expire automatically
10 ninety calendar days from the date of the appointment. The
11 appointing authority shall report each emergency appointment to
12 the director as soon as possible after date of such appointment and
13 the report shall contain the name of the person appointed, the date
14 of appointment, and the reasons which made the appointment
15 necessary. No individual may be given more than one such
16 appointment in any twelve-month period in the same division of
17 service.]

[36.290. Any person in a position subject to this law who
2 may be transferred or promoted to a position exempted under
3 section 36.030, may, by action of the board, at the conclusion of his
4 occupancy of such position, be restored to his previous status under
5 this law.]

[36.300. Vacancies in the divisions of the service subject
2 thereto shall be filled only by:

- 3 (1) Appointment of an eligible certified by the director
4 pursuant to section 36.240;
- 5 (2) Provisional appointment pursuant to section 36.260;
- 6 (3) Emergency appointment pursuant to section 36.270;
- 7 (4) Transfer or demotion of a regular employee pursuant to
8 section 36.280;
- 9 (5) Promotion pursuant to section 36.210 or 36.240;
- 10 (6) Reemployment as provided in section 36.240; or
- 11 (7) Other appointment authorized in this chapter.]

[36.310. The director shall establish and maintain
2 reinstatement registers, which shall contain the names of persons
3 who have been regular employees and who have been laid off in
4 good standing, or demoted in lieu of layoff, due to shortage of work
5 or funds, or the abolition of a position or material change in duties
6 or organization. The order in which names shall be placed on a
7 reinstatement register, and the length of time for which a name
8 shall remain on such register, shall be established by the

9 regulations. The director may remove the name of a person from
10 a reinstatement register, or refuse to certify his name for a position
11 if he finds, after giving him notice and an opportunity to be heard,
12 that such person is not qualified to perform satisfactorily the
13 necessary duties.]

[36.360. In accordance with the regulations, an appointing
2 authority may lay off an employee in a position subject to this
3 chapter whenever the appointing authority deems it necessary by
4 reason of shortage of work or funds, or the abolition of a position
5 or other material change in duties or organization. No regular
6 employee shall be laid off while a person is employed on a
7 provisional or temporary basis in the same class in that
8 division. The seniority and ability of employees to do the
9 remaining work shall be considered, in such manner as the
10 regulations shall provide, among the factors in determining the
11 order of layoffs. The appointing authority shall give written notice
12 to the director of every proposed layoff a reasonable time before the
13 effective date thereof, and the director shall take such action
14 relating thereto as the director considers necessary to secure
15 compliance with the regulations. The name of every regular
16 employee so laid off shall be placed on the appropriate
17 reinstatement register.]

[36.470. 1. Whenever any employee of the state of
2 Missouri, who is employed under the provisions of this chapter, is
3 discharged from or shall voluntarily quit such employment, the
4 head of the department or division employing the employee shall
5 upon written request of the employee, if the employment has been
6 for a period of at least ninety days, issue to the employee, upon his
7 written request therefor, a letter setting forth the nature and
8 character of service rendered by the employee, the duration thereof,
9 and truly stating for what cause, if any, the employee has been
10 discharged from or has quit such employment.

11 2. The head of a department or division affected by this
12 section, who refuses to comply with this section, is guilty of a
13 misdemeanor, and upon conviction thereof shall be punished by a
14 fine not to exceed one hundred dollars.

15 3. There shall be no civil liability for refusing or failing to
16 furnish the letter herein provided except for willful and malicious
17 refusal to furnish such letter.]

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