

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 854

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Offered April 18, 2012.

Senate Substitute adopted, April 18, 2012.

Taken up for Perfection April 18, 2012. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

5977S.03P

## AN ACT

To repeal section 660.315, RSMo, and to enact in lieu thereof one new section relating to the employment disqualification list for home care employees.

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

Section A. Section 660.315, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 660.315, to read as follows:

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

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

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

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

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

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

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

16 contained in subsection 9 of this section.

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

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

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

36           6. Upon the record made at the hearing, the director of the department  
37 or the director's designee shall determine all questions presented and shall  
38 determine whether the person shall be listed on the employee disqualification  
39 list. The director of the department or the director's designee shall clearly state  
40 the reasons for his or her decision and shall include a statement of findings of  
41 fact and conclusions of law pertinent to the questions in issue.

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

47           8. A decision by the director shall be inadmissible in any civil action  
48 brought against a facility or the in-home services provider agency and arising out  
49 of the facts and circumstances which brought about the employment  
50 disqualification proceeding, unless the civil action is brought against the facility  
51 or the in-home services provider agency by the department of health and senior

52 services or one of its divisions.

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

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

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

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

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

65 (5) Any mitigating circumstances;

66 (6) Any aggravating circumstances; and

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

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

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

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

81 (2) Provides in-home services under contract with the department;

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

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

86 (5) Is an entity licensed under chapter 197; or

87 (6) Is a recognized school of nursing, medicine, or other health profession

88 for the purpose of determining whether students scheduled to participate in  
89 clinical rotations with entities described in subdivision (1), (2), or (5) of this  
90 subsection are included in the employee disqualification list. The department  
91 shall inform any person listed above who inquires of the department whether or  
92 not a particular name is on the list. The department may require that the  
93 request be made in writing.

94       12. No person, corporation, organization, or association who received the  
95 employee disqualification list under subdivisions (1) to (5) of subsection 11 of this  
96 section shall knowingly employ any person who is on the employee  
97 disqualification list. Any person, corporation, organization, or association who  
98 received the employee disqualification list under subdivisions (1) to (5) of  
99 subsection 11 of this section, or any person responsible for providing health care  
100 service, who declines to employ or terminates a person whose name is listed in  
101 this section shall be immune from suit by that person or anyone else acting for  
102 or in behalf of that person for the failure to employ or for the termination of the  
103 person whose name is listed on the employee disqualification list.

104       13. **(1) Any employer [who is] required to [discharge an employee**  
105 **because the employee was placed on a disqualification list maintained by the**  
106 **department of health and senior services after the date of hire] deny**  
107 **employment to an applicant or discharge an employee, provisional or**  
108 **otherwise, as a result of information obtained through any portion of**  
109 **the background screening and employment eligibility determination**  
110 **process under section 210.903, or subsequent, periodic screenings, shall**  
111 **not be liable in any action brought by the applicant or employee,**  
112 **provisional or otherwise, and shall not be charged for unemployment**  
113 **insurance benefits based on wages paid to the employee for work prior to the date**  
114 **of discharge, pursuant to section 288.100.**

115       **(2) Notwithstanding subsections 3 and 5 of section 288.090, an**  
116 **employer shall not be charged for unemployment insurance benefits**  
117 **based on wages paid to the employee or an employer making payments**  
118 **in lieu of contributions for work prior to the date of discharge,**  
119 **pursuant to section 288.100, if the employer terminated the employee**  
120 **because the employee:**

121       **(a) Has been found guilty of, pled guilty or nolo contendere in**  
122 **this state or any other state or has been found guilty of a crime as**  
123 **listed in subsection 6 of section 660.317;**

124           **(b) Was placed on the employee disqualification list under this**  
125 **section, after the date of hire;**

126           **(c) Was placed on the employee disqualification registry**  
127 **maintained by the department of mental health, after the date of hire;**

128           **(d) Has a disqualifying finding under this section, section**  
129 **660.317, or is on any of the background check lists in the family care**  
130 **safety registry under sections 210.900 to 210.936; or**

131           **(e) Was denied a good cause waiver as provided for in subsection**  
132 **10 of section 660.317.**

133 **The benefits paid to the employee shall not be attributable to service**  
134 **in the employ of the employer required to discharge an employee under**  
135 **the provisions of this subdivision and shall be deemed as such under**  
136 **the unemployment compensation laws of this state.**

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

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