

SECOND REGULAR SESSION

SENATE BILL NO. 985

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDDLE.

Read 1st time February 5, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6220S.011

AN ACT

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

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

Section A. Sections 210.025, 210.254, and 210.258, RSMo, are repealed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

210.025. 1. **An applicant child care provider; persons employed**
2 **by the applicant child care provider for compensation, including**
3 **contract employees or self-employed individuals; individuals or**
4 **volunteers whose activities involve the care or supervision of children**
5 **for the applicant child care provider or unsupervised access to children**
6 **who are cared for or supervised by the applicant child care provider;**
7 **or individuals residing in the applicant's family child care home who**
8 **are seventeen years of age or older shall be required to submit to a**
9 **criminal background check under section 43.540 prior to an applicant**
10 **being granted a registration and every five years thereafter and an**
11 **annual check of the central registry for child abuse established in**
12 **section 210.145 in order for the applicant** to qualify for receipt of state or
13 federal funds for providing child-care services [in the home] either by direct
14 payment or through reimbursement to a child-care beneficiary[, an applicant and
15 any person over the age of seventeen who is living in the applicant's home shall
16 be required to submit to a criminal background check pursuant to section 43.540
17 and a check of the central registry for child abuse established in section
18 210.145. Effective January 1, 2001, the requirements of this subsection or

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

19 subsection 2 of this section shall be satisfied through registration with the family
20 care safety registry established in sections 210.900 to 210.936]. Any costs
21 associated with such checks shall be paid by the applicant.

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

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

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

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

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

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

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

50 (3) Has pled guilty or nolo contendere to or been found guilty of any felony
51 for an offense against the person as defined by chapter 565, or any other offense
52 against the person involving the endangerment of a child as prescribed by law;
53 of any misdemeanor or felony for a sexual offense as defined by chapter 566; of
54 any misdemeanor or felony for an offense against the family as defined in chapter

55 568, with the exception of the sale of fireworks, as defined in section 320.110, to
56 a child under the age of eighteen; of any misdemeanor or felony for pornography
57 or related offense as defined by chapter 573; or of any similar crime in any
58 federal, state, municipal or other court of similar jurisdiction of which the
59 director has knowledge or any offenses or reports which will disqualify an
60 applicant from receiving state or federal funds.

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

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

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

75 7. Any rule or portion of a rule, as that term is defined in section 536.010,
76 that is created under the authority delegated in this section shall become effective
77 only if it complies with and is subject to all of the provisions of chapter 536 and,
78 if applicable, section 536.028. All rulemaking authority delegated prior to August
79 28, 1999, is of no force and effect and repealed. Nothing in this section shall be
80 interpreted to repeal or affect the validity of any rule filed or adopted prior to
81 August 28, 1999, if it fully complied with all applicable provisions of law. This
82 section and chapter 536 are nonseverable and if any of the powers vested with the
83 general assembly pursuant to chapter 536 to review, to delay the effective date
84 or to disapprove and annul a rule are subsequently held unconstitutional, then
85 the grant of rulemaking authority and any rule proposed or adopted after August
86 28, 1999, shall be invalid and void.

210.254. 1. Child-care facilities operated by religious organizations
2 pursuant to the exempt status recognized in subdivision (5) of section 210.211
3 shall upon enrollment of any child provide the parent or guardian enrolling the
4 child two copies of a notice of parental responsibility, one copy of which shall be

5 retained in the files of the facility after the enrolling parent acknowledges, by
6 signature, having read and accepted the information contained therein.

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

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

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

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

22 (4) Notification that background checks have been conducted [on each
23 individual caregiver and all other personnel at the facility. The background check
24 shall be conducted upon employment and every two years thereafter on each
25 individual caregiver and all other personnel at the facility. Such background
26 check shall include a screening for child abuse or neglect through the children's
27 division, and a criminal record review through the Missouri highway patrol
28 pursuant to section 43.540. The fee for the criminal record review shall be
29 limited to the actual costs incurred by the Missouri highway patrol in conducting
30 such review not to exceed ten dollars] **under the provisions of section**
31 **210.1080;**

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

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

34 3. A copy of notice of parental responsibility, signed by the principal
35 operating officer of the exempt child-care facility and the individual primarily
36 responsible for the religious organization conducting the child-care facility and
37 copies of the annual fire and safety inspections shall be filed annually during the
38 month of August with the [director of the] department of health and senior
39 services. [Exempt child-care facilities which begin operation after August 28,
40 1993, shall file such notice at least five days prior to starting to operate.]

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

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

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

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

13 (4)] To interfere with the selection of children enrolled in a child care
14 facility; or

15 [(5)] (4) To prohibit the use of corporal punishment. However, the
16 department of health and senior services may require the child care facility to
17 provide the parent or guardian enrolling a child in the facility a written
18 explanation of the disciplinary philosophy and policies of the child care facility.

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

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

10 (2) **"Criminal background check":**

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

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

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

18 a. **The state criminal registry or repository, with the use of**

19 fingerprints being required in the state where the staff member resides
20 and optional in other states;

21 b. The state sex offender registry or repository; and

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

23 2. (1) Prior to the employment or presence of a child care staff
24 member in a family child care home, group child care home, child care
25 center, or license-exempt child care facility, the child care provider
26 shall request the results of a criminal background check for such child
27 care staff member from the department of health and senior services.

28 (2) A prospective child care staff member may begin work for a
29 child care provider after the criminal background check has been
30 requested from the department; however, pending completion of the
31 criminal background check, the prospective child care staff member
32 shall be supervised at all times by another child care staff member who
33 received a qualifying result on the criminal background check within
34 the past five years.

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

42 3. The costs of the criminal background check shall be the
43 responsibility of the child care staff member but may be paid or
44 reimbursed by the child care provider at the provider's discretion. The
45 fees charged for the criminal background check shall not exceed the
46 actual cost of processing and administration.

47 4. Except as otherwise provided in subsection 2 of this section,
48 upon completion of the criminal background check, any child care staff
49 member or prospective child care staff member shall be ineligible for
50 employment or presence at a family child care home, a group child care
51 home, a licensed child care center, or a license-exempt child care
52 facility if such person:

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

55 (2) Knowingly makes a materially false statement in connection

56 with the criminal background check as required by this section;

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

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

62 (5) Has been convicted of a felony consisting of:

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

64 (b) Child abuse or neglect;

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

66 (d) Spousal abuse;

67 (e) A crime involving rape or sexual assault;

68 (f) Kidnapping;

69 (g) Arson;

70 (h) Physical assault or battery; or

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

73 (6) Has been convicted of a violent misdemeanor committed as
74 an adult against a child, including the following crimes: child abuse,
75 child endangerment, or sexual assault, or of a misdemeanor involving
76 child pornography; or

77 (7) Has been convicted of any similar crime in any federal, state,
78 municipal, or other court.

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

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

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

90 (2) The department of health and senior services provided to the
91 first provider a qualifying criminal background check result, consistent
92 with this section, for the staff member; and

93 **(3) The staff member is employed by a child care provider within**
94 **Missouri or has been separated from employment from a child care**
95 **provider within Missouri for a period of not more than one hundred**
96 **eighty consecutive days.**

97 **6. (1) The department of health and senior services shall process**
98 **the request for a criminal background check for any prospective child**
99 **care staff member or child care staff member as expeditiously as**
100 **possible, but not to exceed forty-five days after the date on which the**
101 **provider submitted the request.**

102 **(2) The department shall provide the results of the criminal**
103 **background check to the child care provider in a statement that**
104 **indicates whether the prospective child care staff member or child care**
105 **staff member is eligible or ineligible for employment or presence at the**
106 **child care facility. The department shall not reveal to the child care**
107 **provider any disqualifying crime or other related information**
108 **regarding the prospective child care staff member or child care staff**
109 **member.**

110 **(3) If such prospective child care staff member or child care staff**
111 **member is ineligible for employment or presence at the child care**
112 **facility, the department shall, when providing the results of criminal**
113 **background check, include information related to each disqualifying**
114 **crime or other related information, in a report to such prospective**
115 **child care staff member or child care staff member, along with**
116 **information regarding the opportunity to appeal under subsection 7 of**
117 **this section.**

118 **7. The prospective child care staff member or child care staff**
119 **member may appeal in writing to the department to challenge the**
120 **accuracy or completeness of the information contained in his or her**
121 **criminal background check, or to offer information mitigating the**
122 **results and explaining why an eligibility exception should be**
123 **granted. The department of health and senior services shall attempt to**
124 **verify the accuracy of the information challenged by the individual,**
125 **including making an effort to locate any missing disposition**
126 **information related to the disqualifying crime. The appeal shall be**
127 **filed within ten days from the delivery or mailing of the notice of**
128 **ineligibility. The department shall make a decision on the appeal in a**
129 **timely manner.**

130 **8. The department may adopt emergency rules to implement the**
131 **requirements of this section. Any rule or portion of a rule, as that term**
132 **is defined in section 536.010, that is created under the authority**
133 **delegated in this section shall become effective only if it complies with**
134 **and is subject to all of the provisions of chapter 536, and, if applicable,**
135 **section 536.028. This section and chapter 536 are nonseverable, and if**
136 **any of the powers vested with the general assembly pursuant to chapter**
137 **536 to review, to delay the effective date, or to disapprove and annul a**
138 **rule are subsequently held unconstitutional, then the grant of**
139 **rulemaking authority and any rule proposed or adopted after August**
140 **28, 2018, shall be invalid and void.**

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Bill

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