

SENATE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 694

AN ACT

To repeal sections 43.540 and 488.5050, RSMo, and to enact in lieu thereof four new sections relating to records maintained by the Missouri highway patrol, with penalty provisions and an emergency clause for certain sections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 43.540 and 488.5050, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as
3 sections 43.539, 43.540, 43.548, and 488.5050, to read as
4 follows:

5 43.539. 1. As used in this section, the following terms
6 mean:

7 (1) "Applicant", a person who:

8 (a) Is actively employed by or seeks employment with a
9 qualified entity;

10 (b) Is actively licensed or seeks licensure with a
11 qualified entity;

12 (c) Actively volunteers or seeks to volunteer with a
13 qualified entity;

14 (d) Is actively contracted with or seeks to contract with a
15 qualified entity; or

1 (e) Owns or operates a qualified entity;

2 (2) "Care", the provision of care, treatment, education,
3 training, instruction, supervision, or recreation to children,
4 the elderly, or disabled persons;

5 (3) "Missouri criminal record review", a review of criminal
6 history records and sex offender registration records under
7 sections 589.400 to 589.425 maintained by the Missouri state
8 highway patrol in the Missouri criminal records repository;

9 (4) "Missouri Rap Back program", any type of automatic
10 notification made by the Missouri state highway patrol to a
11 qualified entity indicating that an applicant who is employed,
12 licensed, or otherwise under the purview of that entity has been
13 arrested for a reported criminal offense in Missouri as required
14 under section 43.506;

15 (5) "National criminal record review", a review of the
16 criminal history records maintained by the Federal Bureau of
17 Investigation;

18 (6) "National Rap Back program", any type of automatic
19 notification made by the Federal Bureau of Investigation through
20 the Missouri state highway patrol to a qualified entity
21 indicating that an applicant who is employed, licensed, or
22 otherwise under the purview of that entity has been arrested for
23 a reported criminal offense outside the state of Missouri and the
24 fingerprints for that arrest were forwarded to the Federal Bureau
25 of Investigation by the arresting agency;

26 (7) "Patient or resident", a person who by reason of age,
27 illness, disease, or physical or mental infirmity receives or
28 requires care or services furnished by an applicant, as defined

1 in this section, or who resides or boards in, or is otherwise
2 kept, cared for, treated, or accommodated in a facility as
3 defined in section 198.006, for a period exceeding twenty-four
4 consecutive hours;

5 (8) "Qualified entity", a person, business, or organization
6 that provides care, care placement, or educational services for
7 children, the elderly, or persons with disabilities as patients
8 or residents, including a business or organization that licenses
9 or certifies others to provide care or care placement services;

10 (9) "Youth services agency", any agency, school, or
11 association that provides programs, care, or treatment for or
12 exercises supervision over minors.

13 2. The central repository shall have the authority to
14 submit applicant fingerprints to the National Rap Back program to
15 be retained for the purpose of being searched against future
16 submissions to the National Rap Back program, including latent
17 fingerprint searches. Qualified entities may conduct Missouri
18 and national criminal record reviews on applicants and
19 participate in Missouri and National Rap Back programs for the
20 purpose of determining suitability or fitness for a permit,
21 license, or employment, and shall abide by the following
22 requirements:

23 (1) The qualified entity shall register with the Missouri
24 state highway patrol prior to submitting a request for screening
25 under this section. As part of the registration, the qualified
26 entity shall indicate if it chooses to enroll applicants in the
27 Missouri and National Rap Back programs;

28 (2) Qualified entities shall notify applicants subject to a

1 criminal record review under this section that the applicant's
2 fingerprints shall be retained by the state central repository
3 and the Federal Bureau of Investigation and shall be searched
4 against other fingerprints on file, including latent
5 fingerprints;

6 (3) Qualified entities shall notify applicants subject to
7 enrollment in the National Rap Back program that the applicant's
8 fingerprints, while retained, may continue to be compared against
9 other fingerprints submitted or retained by the Federal Bureau of
10 Investigation, including latent fingerprints;

11 (4) The criminal record review and Rap Back process
12 described in this section shall be voluntary and conform to the
13 requirements established in the National Child Protection Act of
14 1993, as amended, and other applicable state or federal law. As
15 a part of the registration, the qualified entity shall agree to
16 comply with state and federal law and shall indicate so by
17 signing an agreement approved by the Missouri state highway
18 patrol. The Missouri state highway patrol may periodically audit
19 qualified entities to ensure compliance with federal law and this
20 section;

21 (5) A qualified entity shall submit to the Missouri state
22 highway patrol a request for screening on applicants covered
23 under this section using a completed fingerprint card;

24 (6) Each request shall be accompanied by a reasonable fee,
25 as provided in section 43.530, plus the amount required, if any,
26 by the Federal Bureau of Investigation for the national criminal
27 record review and enrollment in the National Rap Back program in
28 compliance with the National Child Protection Act of 1993, as

1 amended, and other applicable state or federal laws;

2 (7) The Missouri state highway patrol shall provide,
3 directly to the qualified entity, the applicant's state criminal
4 history records that are not exempt from disclosure under chapter
5 610 or otherwise confidential under law;

6 (8) The national criminal history data shall be available
7 to qualified entities to use only for the purpose of screening
8 applicants as described under this section. The Missouri state
9 highway patrol shall provide the applicant's national criminal
10 history record information directly to the qualified entity;

11 (9) The determination whether the criminal history record
12 shows that the applicant has been convicted of or has a pending
13 charge for any crime that bears upon the fitness of the applicant
14 to have responsibility for the safety and well-being of children,
15 the elderly, or disabled persons shall be made solely by the
16 qualified entity. This section shall not require the Missouri
17 state highway patrol to make such a determination on behalf of
18 any qualified entity;

19 (10) The qualified entity shall notify the applicant, in
20 writing, of his or her right to obtain a copy of any criminal
21 record review, including the criminal history records, if any,
22 contained in the report and of the applicant's right to challenge
23 the accuracy and completeness of any information contained in any
24 such report and obtain a determination as to the validity of such
25 challenge before a final determination regarding the applicant is
26 made by the qualified entity reviewing the criminal history
27 information. A qualified entity that is required by law to apply
28 screening criteria, including any right to contest or request an

1 exemption from disqualification, shall apply such screening
2 criteria to the state and national criminal history record
3 information received from the Missouri state highway patrol for
4 those applicants subject to the required screening; and

5 (11) Failure to obtain the information authorized under
6 this section, with respect to an applicant, shall not be used as
7 evidence in any negligence action against a qualified entity.

8 The state, any political subdivision of the state, or any agency,
9 officer, or employee of the state or a political subdivision
10 shall not be liable for damages for providing the information
11 requested under this section.

12 3. The criminal record review shall include the submission
13 of fingerprints to the Missouri state highway patrol, who shall
14 conduct a Missouri criminal record review, including closed
15 record information under section 610.120. The Missouri state
16 highway patrol shall also forward a copy of the applicant's
17 fingerprints to the Federal Bureau of Investigation for a
18 national criminal record review.

19 4. The applicant subject to a criminal record review shall
20 provide the following information to the qualified entity:

21 (1) Consent to obtain the applicant's fingerprints, conduct
22 the criminal record review, and participate in the Missouri and
23 National Rap Back programs;

24 (2) Consent to obtain the identifying information required
25 to conduct the criminal record review, which may include, but not
26 be limited to:

27 (a) Name;

28 (b) Date of birth;

- 1 (c) Height;
- 2 (d) Weight;
- 3 (e) Eye color;
- 4 (f) Hair color;
- 5 (g) Gender;
- 6 (h) Race;
- 7 (i) Place of birth;
- 8 (j) Social Security number; and
- 9 (k) The applicant's photo.

10 5. Any information received by an authorized state agency
11 or a qualified entity under the provisions of this section shall
12 be used solely for internal purposes in determining the
13 suitability of an applicant. The dissemination of criminal
14 history information from the Federal Bureau of Investigation
15 beyond the authorized state agency or related governmental entity
16 is prohibited. All criminal record check information shall be
17 confidential, and any person who discloses the information beyond
18 the scope allowed is guilty of a class A misdemeanor.

19 6. A qualified entity enrolled in either the Missouri or
20 National Rap Back program shall be notified by the Missouri state
21 highway patrol that a new arrest has been reported on an
22 applicant who is employed, licensed, or otherwise under the
23 purview of the qualified entity. Upon receiving the Rap Back
24 notification, if the qualified entity deems that the applicant is
25 still serving in an active capacity, the entity may request and
26 receive the individual's updated criminal history record. This
27 process shall only occur if:

- 28 (1) The entity has abided by all procedures and rules

1 promulgated by the Missouri state highway patrol and Federal
2 Bureau of Investigation regarding the Missouri and National Rap
3 Back programs;

4 (2) The individual upon whom the Rap Back notification is
5 being made has previously had a Missouri and national criminal
6 record review completed for the qualified entity under this
7 section within the previous six years; and

8 (3) The individual upon whom the Rap Back notification is
9 being made is a current employee, licensee, or otherwise still
10 actively under the purview of the qualified entity.

11 7. The Missouri state highway patrol shall make available
12 or approve the necessary forms, procedures, and agreements
13 necessary to implement the provisions of this section.

14 43.540. 1. As used in this section, the following terms
15 mean:

16 (1) "Applicant", a person who:

17 (a) Is actively employed by or seeks employment with a
18 qualified entity;

19 (b) Is actively licensed or seeks licensure with a
20 qualified entity;

21 (c) Actively volunteers or seeks to volunteer with a
22 qualified entity; or

23 (d) Is actively contracted with or seeks to contract with a
24 qualified entity; [or

25 (e) Owns or operates a qualified entity;

26 (2) "Care", the provision of care, treatment, education,
27 training, instruction, supervision, or recreation;

28 (3) (2) "Missouri criminal record review", a review of

1 criminal history records and sex offender registration records
2 pursuant to sections 589.400 to 589.425 maintained by the
3 Missouri state highway patrol in the Missouri criminal records
4 repository;

5 [(4)] (3) "Missouri Rap Back program", shall include any
6 type of automatic notification made by the Missouri state highway
7 patrol to a qualified entity indicating that an applicant who is
8 employed, licensed, or otherwise under the purview of that entity
9 has been arrested for a reported criminal offense in Missouri as
10 required under section 43.506;

11 [(5)] (4) "National criminal record review", a review of
12 the criminal history records maintained by the Federal Bureau of
13 Investigation;

14 [(6)] (5) "National Rap Back program", shall include any
15 type of automatic notification made by the Federal Bureau of
16 Investigation through the Missouri state highway patrol to a
17 qualified entity indicating that an applicant who is employed,
18 licensed, or otherwise under the purview of that entity has been
19 arrested for a reported criminal offense outside the state of
20 Missouri and the fingerprints for that arrest were forwarded to
21 the Federal Bureau of Investigation by the arresting agency;

22 [(7)] "Patient or resident", a person who by reason of age,
23 illness, disease or physical or mental infirmity receives or
24 requires care or services furnished by an applicant, as defined
25 in this section, or who resides or boards in, or is otherwise
26 kept, cared for, treated or accommodated in a facility as defined
27 in section 198.006, for a period exceeding twenty-four
28 consecutive hours;

1 (8)] (6) "Qualified entity", an entity that is:

2 (a) [A person, business, or organization, whether public or
3 private, for profit, not for profit, or voluntary, that provides
4 care, care placement, or educational services for children, the
5 elderly, or persons with disabilities as patients or residents,
6 including a business or organization that licenses or certifies
7 others to provide care or care placement services;

8 (b)] An office or division of state, county, or municipal
9 government, including a political subdivision or a board or
10 commission designated by statute or approved local ordinance, to
11 issue or renew a license, permit, certification, or registration
12 of authority;

13 [(c)] (b) An office or division of state, county, or
14 municipal government, including a political subdivision or a
15 board or commission designated by statute or approved local
16 ordinance, to make fitness determinations on applications for
17 state, county, or municipal government employment; or

18 [(d) A criminal justice agency, including law enforcement
19 agencies that screen persons seeking issuance or renewal of a
20 license, permit, certificate, or registration to purchase or
21 possess a firearm; or]

22 [(e)] (c) Any entity that is authorized to obtain criminal
23 history record information under 28 CFR 20.33[;

24 (9) "Youth services agency", any public or private agency,
25 school, or association which provides programs, care or treatment
26 for or which exercises supervision over minors].

27 2. The central repository shall have the authority to
28 submit applicant fingerprints to the National Rap Back program to

1 be retained for the purpose of being searched against future
2 submissions to the National Rap Back program, including latent
3 fingerprint searches. Qualified entities may conduct Missouri
4 and national criminal record reviews on applicants and
5 participate in Missouri and National Rap Back programs for the
6 purpose of determining suitability or fitness for a permit,
7 license, or employment, and shall abide by the following
8 requirements:

9 (1) The qualified entity shall register with the Missouri
10 state highway patrol prior to submitting a request for screening
11 under this section. As part of such registration, the qualified
12 entity shall indicate if it chooses to enroll their applicants in
13 the Missouri and National Rap Back programs;

14 (2) Qualified entities shall notify applicants subject to a
15 criminal record review under this section that the applicant's
16 fingerprints shall be retained by the state central repository
17 and the Federal Bureau of Investigation and shall be searched
18 against other fingerprints on file, including latent
19 fingerprints;

20 (3) Qualified entities shall notify applicants subject to
21 enrollment in the National Rap Back program that the applicant's
22 fingerprints, while retained, may continue to be compared against
23 other fingerprints submitted or retained by the Federal Bureau of
24 Investigation, including latent fingerprints;

25 (4) The criminal record review and Rap Back process
26 described in this section shall be voluntary and conform to the
27 requirements established in [the National Child Protection Act of
28 1993, as amended,] Pub. L. 92-544 and other applicable state or

1 federal law. As a part of the registration, the qualified entity
2 shall agree to comply with state and federal law and shall
3 indicate so by signing an agreement approved by the Missouri
4 state highway patrol. The Missouri state highway patrol may
5 periodically audit qualified entities to ensure compliance with
6 federal law and this section;

7 (5) A qualified entity shall submit to the Missouri state
8 highway patrol a request for screening on applicants covered
9 under this section using a completed fingerprint card;

10 (6) Each request shall be accompanied by a reasonable fee,
11 as provided in section 43.530, plus the amount required, if any,
12 by the Federal Bureau of Investigation for the national criminal
13 record review and enrollment in the National Rap Back program in
14 compliance with [the National Child Protection Act of 1993, as
15 amended, and other applicant] applicable state or federal laws;

16 (7) The Missouri state highway patrol shall provide,
17 directly to the qualified entity, the applicant's state criminal
18 history records that are not exempt from disclosure under chapter
19 610 or are otherwise confidential under law;

20 (8) The national criminal history data shall be available
21 to qualified entities to use only for the purpose of screening
22 applicants as described under this section. The Missouri state
23 highway patrol shall provide the applicant's national criminal
24 history record information directly to the qualified entity;

25 (9) [The determination whether the criminal history record
26 shows that the applicant has been convicted of, or has a pending
27 charge, for any crime that bears upon the fitness of the
28 applicant to have responsibility for the safety and well-being of

1 children, the elderly, or disabled persons shall be made solely
2 by the qualified entity.] This section shall not require the
3 Missouri state highway patrol to make [such a] an eligibility
4 determination on behalf of any qualified entity;

5 (10) The qualified entity shall notify the applicant, in
6 writing, of his or her right to obtain a copy of any criminal
7 record review, including the criminal history records, if any,
8 contained in the report, and of the applicant's right to
9 challenge the accuracy and completeness of any information
10 contained in any such report and to obtain a determination as to
11 the validity of such challenge before a final determination
12 regarding the applicant is made by the qualified entity reviewing
13 the criminal history information. A qualified entity that is
14 required by law to apply screening criteria, including any right
15 to contest or request an exemption from disqualification, shall
16 apply such screening criteria to the state and national criminal
17 history record information received from the Missouri state
18 highway patrol for those applicants subject to the required
19 screening; and

20 (11) Failure to obtain the information authorized under
21 this section with respect to an applicant shall not be used as
22 evidence in any negligence action against a qualified entity.
23 The state, any political subdivision of the state, or any agency,
24 officer, or employee of the state or a political subdivision
25 shall not be liable for damages for providing the information
26 requested under this section.

27 3. The criminal record review shall include the submission
28 of fingerprints to[:

1 (1)] the Missouri state highway patrol, who shall conduct a
2 Missouri criminal record review, including closed record
3 information under section 610.120[; and

4 (2)]. The Missouri state highway patrol shall also forward
5 a copy of the applicant's fingerprints to the Federal Bureau of
6 Investigation for a national criminal record review.

7 4. The applicant subject to a criminal record review shall
8 provide the following information to the qualified entity:

9 (1) Consent to obtain the applicant's fingerprints, conduct
10 the criminal record review, and participate in the Missouri and
11 National Rap Back programs;

12 (2) Consent to obtain the identifying information required
13 to conduct the criminal record review, which may include, but not
14 be limited to:

15 (a) Name;

16 (b) Date of birth;

17 (c) Height;

18 (d) Weight;

19 (e) Eye color;

20 (f) Hair color;

21 (g) Gender;

22 (h) Race;

23 (i) Place of birth;

24 (j) Social Security number; and

25 (k) The applicant's photo.

26 5. Any information received by an authorized state agency
27 or a qualified entity pursuant to the provisions of this section
28 shall be used solely for internal purposes in determining the

1 suitability of an applicant. The dissemination of criminal
2 history information from the Federal Bureau of Investigation
3 beyond the authorized state agency or related governmental entity
4 is prohibited. All criminal record check information shall be
5 confidential and any person who discloses the information beyond
6 the scope allowed is guilty of a class A misdemeanor.

7 6. A qualified entity enrolled in either the Missouri or
8 National Rap Back programs shall be notified by the Missouri
9 state highway patrol that a new arrest has been reported on an
10 applicant who is employed, licensed, or otherwise under the
11 purview of the qualified entity. Upon receiving the Rap Back
12 notification, if the qualified entity deems that the applicant is
13 still serving in an active capacity, the entity may request and
14 receive the individual's updated criminal history record. This
15 process shall only occur if:

16 (1) The agency has abided by all procedures and rules
17 promulgated by the Missouri state highway patrol and Federal
18 Bureau of Investigation regarding the Missouri and National Rap
19 Back programs;

20 (2) The individual upon whom the Rap Back notification is
21 being made has previously had a Missouri and national criminal
22 record review completed for the qualified entity under this
23 section within the previous six years; and

24 (3) The individual upon whom the Rap Back notification is
25 being made is a current employee, licensee, or otherwise still
26 actively under the purview of the qualified entity.

27 7. The highway patrol shall make available or approve the
28 necessary forms, procedures, and agreements necessary to

1 implement the provisions of this section.

2 43.548. 1. Missouri circuit courts and the department of
3 social services may require the fingerprinting of applicants for
4 adoptions or guardians, conservators, advocates, or personal
5 representatives over minors or incapacitated, elderly, or
6 disabled persons, including supervision and care over minors or
7 elderly persons or persons with disabilities, for the purpose of
8 positive identification and receiving criminal history
9 information when determining an applicant's ability or fitness to
10 serve in such capacity.

11 2. Fingerprint-based criminal history record checks
12 submitted under subsection 1 of this section shall be forwarded
13 to the Missouri state highway patrol to be used to search the
14 state's criminal history repository, and the fingerprints shall
15 be forwarded to the Federal Bureau of Investigation for a
16 national criminal background check under section 43.540. All
17 applicable fees shall be paid under section 43.530.

18 Notwithstanding the provisions of section 610.120, all records
19 related to any criminal history information shall be accessible
20 and available to the circuit court or state agency making the
21 request.

22 488.5050. 1. In addition to any other surcharges
23 authorized by statute, the clerk of each court of this state
24 shall collect the surcharges provided for in subsection 2 of this
25 section.

26 2. A surcharge of thirty dollars shall be assessed as costs
27 in each circuit court proceeding filed within this state in all
28 criminal cases in which the defendant is found guilty of a

1 felony, except when the defendant is found guilty of a class B
2 felony, class A felony, or an unclassified felony, under chapter
3 [195] 579, in which case, the surcharge shall be sixty dollars.
4 A surcharge of fifteen dollars shall be assessed as costs in each
5 court proceeding filed within this state in all other criminal
6 cases, except for traffic violation cases in which the defendant
7 is found guilty of a misdemeanor.

8 3. Notwithstanding any other provisions of law, the moneys
9 collected by clerks of the courts pursuant to the provisions of
10 subsection 1 of this section shall be collected and disbursed in
11 accordance with sections 488.010 to 488.020, and shall be payable
12 to the state treasurer.

13 4. The state treasurer shall deposit such moneys or other
14 gifts, grants, or moneys received on a monthly basis into the
15 "DNA Profiling Analysis Fund", which is hereby created in the
16 state treasury. The fund shall be administered by the department
17 of public safety. The moneys deposited into the DNA profiling
18 analysis fund shall be used only by the highway patrol crime lab
19 to fulfill the purposes of the DNA profiling system pursuant to
20 section 650.052. Notwithstanding the provisions of section
21 33.080 to the contrary, any moneys remaining in the fund at the
22 end of the biennium shall not revert to the credit of the general
23 revenue fund.

24 5. The provisions of subsections 1 and 2 of this section
25 shall expire on August 28, [2019] 2029.

26 Section B. Because of the urgent need to protect the safety
27 of the citizens of this state, the repeal and reenactment of
28 section 43.540 and the enactment of sections 43.539 and 43.548 of

1 this act is deemed necessary for the immediate preservation of
2 the public health, welfare, peace, and safety, and is hereby
3 declared to be an emergency act within the meaning of the
4 constitution, and the repeal and reenactment of section 43.540
5 and the enactment of sections 43.539 and 43.548 of this act shall
6 be in full force and effect upon its passage and approval.

7