

SENATE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILLS NOS. 557 & 560
AN ACT

To amend chapter 210, RSMo, by adding thereto sixteen new sections relating to the protection of children, with penalty provisions and an emergency clause.

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

Section A. Chapter 210, RSMo, is amended by adding thereto
2 sixteen new sections, to be known as sections 210.143, 210.493,
3 210.1250, 210.1253, 210.1256, 210.1259, 210.1262, 210.1263,
4 210.1264, 210.1265, 210.1268, 210.1271, 210.1274, 210.1280,
5 210.1283, and 210.1286, to read as follows:

210.143. 1. The children's division; law enforcement,
2 including the state technical assistance team; or the
3 prosecuting or circuit attorney may petition the circuit
4 court for an order directing an exempt-from-licensure
5 residential care facility, as those terms are defined under
6 section 210.1253, that is the subject of an investigation of
7 child abuse or neglect to present the child at a place and
8 time designated by the court to a children's division worker
9 for an assessment of the child's health, safety, and well-
10 being.

11 2. The court shall enter an order under this section
12 if:

13 (1) The court determines that there is reasonable
14 cause to believe that the child has been abused or neglected
15 and the residential care facility does not voluntarily
16 provide access to the child;

17 (2) The assessment is reasonably necessary for the
18 completion of an investigation or the collection of
19 evidence; and

20 (3) Doing so is in the best interest of the child.

21 3. The assessment shall be completed and the child
22 shall be returned to the residential care facility or to the
23 child's parents or guardian within seventy-two hours, unless
24 the court, after a hearing with attempted notice to the
25 facility and to the parents or guardian and with due process
26 for all parties, enters further orders to the contrary.

27 4. If the court enters an order to produce the child
28 under this section, the court may expand the order to
29 produce other children in the care of the residential care
30 facility if the court finds there is reasonable cause to
31 believe that such children may have been abused or neglected.

32 5. The petition and order may be made on an ex parte
33 basis if it is reasonable to believe that providing notice
34 may place the child at risk for further abuse or neglect, if
35 it is reasonable to believe that providing notice may cause
36 the child to be removed from the state of Missouri or the
37 jurisdiction of the court, or if it is reasonable to believe
38 that evidence relevant to the investigation will be
39 unavailable if the ex parte order is not entered.

40 6. Any person served with a subpoena, petition, or
41 order under this section shall not be required to file an
42 answer, but may file a motion for a protective order or
43 other appropriate relief. The motion shall be filed at or
44 before the time for production or disclosure set out in the
45 subpoena or order. The motion shall be in writing, but it
46 may be informal and no particular form shall be required.
47 The clerk shall serve a copy of the motion on the director
48 of the children's division and any agency who applied for
49 the order. The court shall expedite a hearing on the motion

50 and shall issue its decision no later than one business day
51 after the date the motion is filed. The court may review
52 the motion in camera and stay implementation of the order
53 once for up to three days. The in camera review shall be
54 conducted on the record, but steps shall be taken to protect
55 the identity of the child. Any information that may reveal
56 the identity of a hotline reporter shall not be disclosed to
57 anyone in any proceeding under this subsection unless
58 otherwise allowed by law.

59 7. The petition for an order under this section shall
60 be filed in the juvenile or family court that has judicial
61 custody of the child under section 211.031 or in the circuit
62 court of the county:

- 63 (1) Where the child resides;
64 (2) Where the child may be found;
65 (3) Where the residential care facility is located;
66 (4) Where the alleged perpetrator of the child abuse
67 or neglect resides or may be found;
68 (5) Where the subject of the subpoena may be located
69 or found; or
70 (6) Of Cole if none of the other venue provisions of
71 this subsection apply.

72 8. The court shall expedite all proceedings under this
73 section so as to ensure the safety of the child, the
74 preservation of relevant evidence, that child abuse and
75 neglect investigations may be completed within statutory
76 time frames, and that due process is provided to the parties
77 involved.

78 9. Any person who knowingly violates this section
79 shall be guilty of a class A misdemeanor.

80 10. The time frames for the children's division to
81 complete its investigation and notify the alleged
82 perpetrator of its decision set forth in sections 210.145,

83 210.152, and 210.183 shall be tolled from the date that the
84 division files a petition for a subpoena until the
85 information is produced in full, until such subpoena is
86 withdrawn, or until a court of competent jurisdiction
87 quashes such subpoena.

210.493. 1. Officers, managers, contractors,
2 volunteers with access to children, employees, and other
3 support staff of licensed residential care facilities and
4 licensed child placing agencies in accordance with sections
5 210.481 to 210.536; owners of such residential care
6 facilities who will have access to the facilities; and
7 owners of such child placing agencies who will have access
8 to children shall submit fingerprints and any information
9 that the department requires to complete the background
10 checks, as specified in regulations established by the
11 department, to the Missouri state highway patrol for the
12 purpose of conducting state and federal fingerprint-based
13 background checks.

2. Officers, managers, contractors, volunteers with
15 access to children, employees, and other support staff of
16 residential care facilities subject to the notification
17 requirements under sections 210.1250 to 210.1286; any person
18 eighteen years of age or older who resides at or on the
19 property of such residential care facility; any person who
20 has unsupervised contact with a resident of the residential
21 care facility; and owners of such residential care
22 facilities who will have access to the facilities shall
23 submit fingerprints and any information that the department
24 requires to complete the background checks, as specified in
25 regulations established by the department, to the Missouri
26 state highway patrol for the purpose of conducting state and
27 federal fingerprint-based background checks.

3. A background check shall include:

29 (1) A Federal Bureau of Investigation fingerprint
30 check;

31 (2) A search of the National Crime Information
32 Center's National Sex Offender Registry; and

33 (3) A search of the following registries,
34 repositories, or databases in Missouri, the state where the
35 applicant resides, and each state where such applicant
36 resided during the preceding five years:

37 (a) The state criminal registry or repository, with
38 the use of fingerprints being required in the state where
39 the applicant resides and optional in other states;

40 (b) The state sex offender registry or repository;

41 (c) The state family care safety registry; and

42 (d) The state-based child abuse and neglect registry
43 and database.

44 4. For the purposes this section and notwithstanding
45 any other provision of law, "department" means the
46 department of social services.

47 5. The department shall be responsible for background
48 checks as part of a residential care facility or child
49 placing agency application for licensure, renewal of
50 licensure, or for license monitoring.

51 6. The department shall be responsible for background
52 checks for residential care facilities subject to the
53 notification requirements of sections 210.1250 to 210.1286.

54 7. Fingerprint cards and any required fees shall be
55 sent to the Missouri state highway patrol's central
56 repository. The fingerprints shall be used for searching
57 the state criminal records repository and shall also be
58 forwarded to the Federal Bureau of Investigation for a
59 federal criminal records search under section 43.540. The
60 Missouri state highway patrol shall notify the department of
61 any criminal history record information or lack of criminal

62 history record information discovered on the individual.
63 Notwithstanding the provisions of section 610.120, all
64 records related to any criminal history information
65 discovered shall be accessible and available to the
66 department.

67 8. Fingerprints submitted to the Missouri state
68 highway patrol for the purpose of conducting state and
69 federal fingerprint-based background checks under this
70 section shall be valid for a period of five years.

71 9. The department shall provide the results of the
72 background check to the applicant in a statement that
73 indicates whether the applicant is eligible or ineligible
74 for employment or presence at the licensed residential care
75 facility or licensed child placing agency. The department
76 shall not reveal to the residential care facility or the
77 child placing agency any disqualifying offense or other
78 related information regarding the applicant. The applicant
79 shall have the opportunity to appeal an ineligible finding.

80 10. The department shall provide the results of the
81 background check to the applicant in a statement that
82 indicates whether the applicant is eligible or ineligible
83 for employment or presence at the residential care facility
84 subject to the notification requirements of sections
85 210.1250 to 210.1286. The department shall not reveal to
86 the residential care facility any disqualifying offense or
87 other related information regarding the applicant. The
88 applicant shall have the opportunity to appeal an ineligible
89 finding.

90 11. An applicant shall be ineligible if the applicant:

91 (1) Refuses to consent to the background check as
92 required by this section;

93 (2) Knowingly makes a materially false statement in
94 connection with the background check as required by this
95 section;

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

99 (4) Is listed as a perpetrator of child abuse or
100 neglect under sections 210.109 to 210.183 or any other
101 finding of child abuse or neglect based on any other state's
102 registry or database; or

103 (5) Has pled guilty or nolo contendere to or been
104 found guilty of:

105 (a) Any felony for an offense against the person as
106 defined in chapter 565;

107 (b) Any other offense against the person involving the
108 endangerment of a child as prescribed by law;

109 (c) Any misdemeanor or felony for a sexual offense as
110 defined in chapter 566;

111 (d) Any misdemeanor or felony for an offense against
112 the family as defined in chapter 568;

113 (e) Burglary in the first degree as defined in section
114 569.160;

115 (f) Any misdemeanor or felony for robbery as defined
116 in chapter 570;

117 (g) Any misdemeanor or felony for pornography or
118 related offense as defined in chapter 573;

119 (h) Any felony for arson as defined in chapter 569;

120 (i) Any felony for armed criminal action as defined in
121 section 571.015, unlawful use of a weapon as defined in
122 section 571.030, unlawful possession of a firearm as defined
123 in section 571.070, or the unlawful possession of an
124 explosive as defined in section 571.072;

125 (j) Any felony for making a terrorist threat as
126 defined in section 574.115, 574.120, or 574.125;

127 (k) A felony drug-related offense committed during the
128 preceding five years; or

129 (l) Any similar offense in any federal, state, or
130 other court of similar jurisdiction of which the department
131 has knowledge.

132 12. Any person aggrieved by a decision of the
133 department shall have the right to seek an administrative
134 review. The review shall be filed with the department
135 within fourteen days from the mailing of the notice of
136 ineligibility. Any decision not timely appealed shall be
137 final.

138 13. Any required fees shall be paid by the individual
139 applicant, facility, or agency.

140 14. The department is authorized to promulgate rules,
141 including emergency rules, to implement the provisions of
142 this section. Any rule or portion of a rule, as that term
143 is defined in section 536.010, that is created under the
144 authority delegated in this section shall become effective
145 only if it complies with and is subject to all of the
146 provisions of chapter 536 and, if applicable, section
147 536.028. This section and chapter 536 are nonseverable, and
148 if any of the powers vested with the general assembly
149 pursuant to chapter 536 to review, to delay the effective
150 date, or to disapprove and annul a rule are subsequently
151 held unconstitutional, then the grant of rulemaking
152 authority and any rule proposed or adopted after the
153 effective date of this section, shall be invalid and void.

210.1250. Sections 210.1250 to 210.1286 shall be known
2 and may be cited as the "Residential Care Facility
3 Notification Act".

210.1253. As used in sections 210.1250 to 210.1286,
2 unless the context clearly provides otherwise, the following
3 terms mean:

4 (1) "Child", a person who is under eighteen years of
5 age;

6 (2) "Department", the department of social services,
7 or the children's division within the department of social
8 services, as determined by the department;

9 (3) "Director", a person who is responsible for the
10 operation of the residential care facility;

11 (4) "Exempt-from-licensure" or "license-exempt", a
12 residential care facility that is not required to be
13 licensed under section 210.516;

14 (5) "Person", an individual, partnership,
15 organization, association, or corporation;

16 (6) "Residential care facility", any place, facility,
17 or home operated by any person who receives children who are
18 not related to the operator and whose parent or guardian is
19 not a resident of the same facility and that provides such
20 children with supervision, care, lodging, and maintenance
21 for twenty-four hours a day, with or without transfer of
22 custody.

210.1256. 1. The department shall be the notification
2 agency for all license-exempt residential care facilities,
3 and the department shall fulfill the duties and
4 responsibilities of the provisions of sections 210.1250 to
5 210.1286.

6 2. A residential care facility shall allow parents or
7 guardians of children in the residential care facility
8 unencumbered access to the children of the parents or
9 guardians in the residential care facility without requiring
10 prior notification to the residential care facility.

11 3. A residential care facility shall provide for
12 adequate food, clothing, shelter, medical, and other care
13 necessary to provide for the physical and mental health of
14 the child.

210.1259. 1. The director of any residential care
2 facility shall provide the required notification in
3 accordance with sections 210.1250 to 210.1286 before such
4 operator shall accept any children.

2. All residential care facilities operating on the
6 effective date of sections 210.1250 to 210.1286 shall
7 register accordingly within three months after the effective
8 date of sections 210.1250 to 210.1286.

3. The provisions of sections 210.1250 to 210.1286
10 shall not apply to any residential care facility that is
11 already licensed so long as the license, registration, or
12 monitoring under which such facility already operates
13 requires of that facility all requirements provided under
14 sections 210.1250 to 210.1286.

210.1262. The notification shall be filed by the
2 director or his or her designee of the residential care
3 facility to the department on forms provided by the
4 department and shall contain the following information:

(1) Name, street address, mailing address, and phone
6 number of the residential care facility;

(2) Name of the director, owner, operator, all staff
8 members, volunteers, and any individual eighteen years of
9 age or older who resides at or on the property of the
10 residential care facility;

(3) Name and description of the agency or organization
12 operating the residential care facility, including a
13 statement as to whether the agency or organization is
14 incorporated;

- 15 (4) Name and address of the sponsoring organization of
16 the residential care facility, if applicable;
- 17 (5) School or schools attended by the children served
18 by the residential care facility;
- 19 (6) Fire and safety inspection certificate;
- 20 (7) Local health department inspection certificate; and
- 21 (8) Proof that medical records are maintained for each
22 child.

210.1263. Officers, managers, contractors, volunteers
2 with access to children, employees, and other support staff
3 of residential care facilities subject to the notification
4 requirements under sections 210.1250 to 210.1286; any person
5 eighteen years of age or older who resides at or on the
6 property of such residential care facility; any person who
7 has unsupervised contact with a resident of such residential
8 care facility; and owners of such residential care
9 facilities who will have access to the facilities shall
10 undergo background checks under section 210.493.

210.1264. Upon request by the department or a law
2 enforcement officer acting within the scope of his or her
3 employment, any license-exempt residential care facility
4 subject to the notification requirements of sections
5 210.1250 to 210.1286 shall provide a full census and
6 demographic information of children at the residential care
7 facility, including parental or other guardian contact
8 information and a full list of officers, managers,
9 contractors, volunteers with access to children, employees,
10 and other support staff of the residential care facility;
11 any person eighteen years of age or older who resides at or
12 on the property of the residential care facility; and any
13 person who has unsupervised contact with a resident of the
14 residential care facility.

210.1265. The residential care facility shall comply with all fire, safety, health, and sanitation inspections as may be required by state law or local ordinance.

210.1268. When the department is advised or has reason to believe that any residential care facility is operating without proper notification in accordance with sections 210.1250 to 210.1286, it shall give the director of the residential care facility written notice by certified mail that such person shall file notification in accordance with sections 210.1250 to 210.1286 within thirty days after receipt of such notice, or the department may request a court injunction as provided under section 210.1271.

210.1271. 1. Notwithstanding any other remedy, the department, the prosecuting or circuit attorney of the county where the facility is located, or the attorney general may seek injunctive relief to cease the operation of the residential care facility and provide for the appropriate removal of the children from the residential care facility and placement in the custody of the parent or legal guardian or any other appropriate individual or entity in the discretion of the court, refer the matter to the juvenile officer of the appropriate county for appropriate proceedings under chapter 211, or other orders as the court determines appropriate to ensure the health and safety of the children. Such action shall be brought in the circuit court of the county in which such residential care facility is located and shall be initiated only for the following violations:

(1) Providing supervision, care, lodging, or maintenance for any children in such facility without filing notification in accordance with sections 210.1250 to 210.1286;

21 (2) Failing to satisfactorily comply with all fire,
22 safety, health, and sanitation inspections as may be
23 required by state law or local ordinance and required under
24 section 210.252;

25 (3) Failing to comply with background checks as
26 required by section 210.493; or

27 (4) An immediate health or safety concern for the
28 children at the residential care facility.

29 2. In cases of an order granted ex parte under
30 subsection 1 of this section requiring a residential care
31 facility to cease operations, a hearing shall be held within
32 three business days to determine whether the order shall
33 remain in effect, with attempted notice to the facility and
34 the parents or guardians and due process for all parties.
35 In determining whether the order shall remain in effect, the
36 court shall consider whether there exists reasonable cause
37 to believe that the grounds for the original ex parte order
38 continue to persist or if additional grounds exist to
39 support the ex parte order as necessary to protect the
40 health and safety of the children at the facility.

41 3. The department may notify the attorney general of
42 any case in which the department makes a referral to a
43 juvenile officer for removal of a child from a residential
44 care facility. The notification shall include any
45 violations under subsection 1 of this section.

46 4. If the court refers the matter to a juvenile
47 officer, the court may also enter an order placing a child
48 in the emergency, temporary protective custody of the
49 children's division within the department, as provided under
50 this section, for a period of time not to exceed five days.
51 Such placement shall occur only if the children's division
52 certifies to the court that the children's division has a

53 suitable, temporary placement for the child and the court
54 makes specific, written findings that:

55 (1) It is contrary to the welfare of the child to
56 remain in the residential care facility;

57 (2) That the parent or legal guardian is unable or
58 unwilling to take physical custody of the child within that
59 time; and

60 (3) There is no other temporary, suitable placement for
61 the child.

62 If the parent or legal guardian of the child does not make
63 suitable arrangements for the custody and disposition of the
64 child within five days of placement within the children's
65 division, the child shall fall under the original and
66 exclusive jurisdiction of the juvenile court under
67 subdivision (1) or (2) of subsection 1 of section 211.031
68 and the juvenile officer shall file a petition with the
69 juvenile court for further proceedings. Under no
70 circumstances shall the children's division be required to
71 retain care and custody of the child for more than five days
72 without an order from the juvenile court.

73 5. The provisions of sections 452.700 to 452.930 shall
74 apply and the court shall follow the procedures specified
75 under section 452.755 for children who are placed at a
76 residential care facility and who are from another state or
77 country or are under the jurisdiction or authority of a
78 court from another state.

2 210.1274. Nothing in the statutes of Missouri shall
3 give any governmental agency jurisdiction or authority to
4 regulate or attempt to regulate, control, or influence the
5 form, manner, or content of the religious curriculum,
6 program, or ministry of a school or of a facility sponsored
by a church or religious organization.

210.1280. The department shall maintain a list of all residential care facilities in compliance with sections 210.1250 to 210.1286, and the list shall be provided upon request. The list shall also include information regarding how a person may obtain information about the nature and disposition of any substantiated child abuse or neglect reports at or related to the residential care facility, as provided in section 210.150.

210.1283. A person is guilty of a class B misdemeanor if such person subject to background check requirements knowingly fails to complete a background check, as described under sections 210.493 and 210.1263.

210.1286. The department shall promulgate rules and regulations necessary for the implementation of sections 210.1250 to 210.1286. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of sections 210.1250 to 210.1286 shall be invalid and void.

Section B. Because immediate action is necessary to protect children, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and

6 section A of this act shall be in full force and effect upon
7 its passage and approval.