

FIRST REGULAR SESSION

# SENATE BILL NO. 264

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BEAN.

1108S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 43.539 and 43.540, RSMo, and to enact in lieu thereof two new sections relating to the Missouri rap back program, with existing penalty provisions.

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

Section A. Sections 43.539 and 43.540, RSMo, are repealed  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

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

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

4 (a) Is actively employed by or seeks employment with a  
5 qualified entity;

6 (b) Is actively licensed or seeks licensure with a  
7 qualified entity;

8 (c) Actively volunteers or seeks to volunteer with a  
9 qualified entity;

10 (d) Is actively contracted with or seeks to contract  
11 with a qualified entity; or

12 (e) Owns or operates a qualified entity;

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

16 (3) "Missouri criminal record review", a review of  
17 criminal history records and sex offender registration  
18 records under sections 589.400 to 589.425 maintained by the

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

19 Missouri state highway patrol in the Missouri criminal  
20 records repository;

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

27 (5) "National criminal record review", a review of the  
28 criminal history records maintained by the Federal Bureau of  
29 Investigation;

30 (6) "National Rap Back program", any type of automatic  
31 notification made by the Federal Bureau of Investigation  
32 through the Missouri state highway patrol to a qualified  
33 entity indicating that an applicant who is employed,  
34 licensed, or otherwise under the purview of that entity has  
35 been arrested for a reported criminal offense outside the  
36 state of Missouri and the fingerprints for that arrest were  
37 forwarded to the Federal Bureau of Investigation by the  
38 arresting agency;

39 (7) "Patient or resident", a person who by reason of  
40 age, illness, disease, or physical or mental infirmity  
41 receives or requires care or services furnished by an  
42 applicant, as defined in this section, or who resides or  
43 boards in, or is otherwise kept, cared for, treated, or  
44 accommodated in a facility as defined in section 198.006,  
45 for a period exceeding twenty-four consecutive hours;

46 (8) "Qualified entity", a person, business, or  
47 organization that provides care, care placement, or  
48 educational services for children, the elderly, or persons  
49 with disabilities as patients or residents, including a

50 business or organization that licenses or certifies others  
51 to provide care or care placement services;

52 (9) "Youth services agency", any agency, school, or  
53 association that provides programs, care, or treatment for  
54 or exercises supervision over minors.

55 2. The central repository shall have the authority to  
56 submit applicant fingerprints to the National Rap Back  
57 program to be retained for the purpose of being searched  
58 against future submissions to the National Rap Back program,  
59 including latent fingerprint searches. Qualified entities  
60 may conduct Missouri and national criminal record reviews on  
61 applicants and participate in Missouri and National Rap Back  
62 programs for the purpose of determining suitability or  
63 fitness for a permit, license, or employment, and shall  
64 abide by the following requirements:

65 (1) The qualified entity shall register with the  
66 Missouri state highway patrol prior to submitting a request  
67 for screening under this section. As part of the  
68 registration, the qualified entity shall indicate if it  
69 chooses to enroll applicants in the Missouri and National  
70 Rap Back programs;

71 (2) Qualified entities shall notify applicants subject  
72 to a criminal record review under this section that the  
73 applicant's fingerprints shall be retained by the state  
74 central repository and the Federal Bureau of Investigation  
75 and shall be searched against other fingerprints on file,  
76 including latent fingerprints;

77 (3) Qualified entities shall notify applicants subject  
78 to enrollment in the National Rap Back program that the  
79 applicant's fingerprints, while retained, may continue to be  
80 compared against other fingerprints submitted or retained by

81 the Federal Bureau of Investigation, including latent  
82 fingerprints;

83 (4) The criminal record review and Rap Back process  
84 described in this section shall be voluntary and conform to  
85 the requirements established in the National Child  
86 Protection Act of 1993, as amended, and other applicable  
87 state or federal law. As a part of the registration, the  
88 qualified entity shall agree to comply with state and  
89 federal law and shall indicate so by signing an agreement  
90 approved by the Missouri state highway patrol. The Missouri  
91 state highway patrol may periodically audit qualified  
92 entities to ensure compliance with federal law and this  
93 section;

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

98 (6) Each request shall be accompanied by a reasonable  
99 fee, as provided in section 43.530, plus the amount  
100 required, if any, by the Federal Bureau of Investigation for  
101 the national criminal record review and enrollment in the  
102 National Rap Back program in compliance with the National  
103 Child Protection Act of 1993, as amended, and other  
104 applicable state or federal laws;

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

109 (8) The national criminal history data shall be  
110 available to qualified entities to use only for the purpose  
111 of screening applicants as described under this section.  
112 The Missouri state highway patrol shall provide the

113 applicant's national criminal history record information  
114 directly to the qualified entity;

115       (9) The determination whether the criminal history  
116 record shows that the applicant has been convicted of or has  
117 a pending charge for any crime that bears upon the fitness  
118 of the applicant to have responsibility for the safety and  
119 well-being of children, the elderly, or disabled persons  
120 shall be made solely by the qualified entity. This section  
121 shall not require the Missouri state highway patrol to make  
122 such a determination on behalf of any qualified entity;

123       (10) The qualified entity shall notify the applicant,  
124 in writing, of his or her right to obtain a copy of any  
125 criminal record review, including the criminal history  
126 records, if any, contained in the report and of the  
127 applicant's right to challenge the accuracy and completeness  
128 of any information contained in any such report and obtain a  
129 determination as to the validity of such challenge before a  
130 final determination regarding the applicant is made by the  
131 qualified entity reviewing the criminal history  
132 information. A qualified entity that is required by law to  
133 apply screening criteria, including any right to contest or  
134 request an exemption from disqualification, shall apply such  
135 screening criteria to the state and national criminal  
136 history record information received from the Missouri state  
137 highway patrol for those applicants subject to the required  
138 screening; and

139       (11) Failure to obtain the information authorized  
140 under this section, with respect to an applicant, shall not  
141 be used as evidence in any negligence action against a  
142 qualified entity. The state, any political subdivision of  
143 the state, or any agency, officer, or employee of the state

or a political subdivision shall not be liable for damages for providing the information requested under this section.

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

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

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

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

- (a) Name;
- (b) Date of birth;
- (c) Height;
- (d) Weight;
- (e) Eye color;
- (f) Hair color;
- (g) Gender;
- (h) Race;
- (i) Place of birth;
- (j) Social Security number; and
- (k) The applicant's photo.

5. Any information received by an authorized state agency or a qualified entity under the provisions of this section shall be used solely for internal purposes in

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

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

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

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

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

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

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

(1) "Applicant", a person who:

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

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

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

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

(2) "Missouri criminal record review", a review of  
criminal history records and sex offender registration  
records pursuant to sections 589.400 to 589.425 maintained  
by the Missouri state highway patrol in the Missouri  
criminal records repository;

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

(4) "National criminal record review", a review of the  
criminal history records maintained by the Federal Bureau of  
Investigation;

(5) "National Rap Back program", shall include any  
type of automatic notification made by the Federal Bureau of  
Investigation through the Missouri state highway patrol to a  
qualified entity indicating that an applicant who is  
employed, licensed, or otherwise under the purview of that  
entity has been arrested for a reported criminal offense



33 outside the state of Missouri and the fingerprints for that  
34 arrest were forwarded to the Federal Bureau of Investigation  
35 by the arresting agency;

36 (6) "Qualified entity", an entity that is:

37 (a) An office or division of state, county, or  
38 municipal government, including a political subdivision or a  
39 board or commission designated by statute or approved local  
40 ordinance, to issue or renew a license, permit,  
41 certification, or registration of authority;

42 (b) An office or division of state, county, or  
43 municipal government, including a political subdivision or a  
44 board or commission designated by statute or approved local  
45 ordinance, to make fitness determinations on applications  
46 for state, county, or municipal government employment; or

47 (c) Any entity that is authorized to obtain criminal  
48 history record information under 28 CFR 20.33.

49 2. The central repository shall have the authority to  
50 submit applicant fingerprints to the National Rap Back  
51 program to be retained for the purpose of being searched  
52 against future submissions to the National Rap Back program,  
53 including latent fingerprint searches. Qualified entities  
54 may conduct Missouri and national criminal record reviews on  
55 applicants and participate in Missouri and National Rap Back  
56 programs for the purpose of determining suitability or  
57 fitness for a permit, license, or employment, and shall  
58 abide by the following requirements:

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

65           (2) Qualified entities shall notify applicants subject  
66 to a criminal record review under this section that the  
67 applicant's fingerprints shall be retained by the state  
68 central repository and the Federal Bureau of Investigation  
69 and shall be searched against other fingerprints on file,  
70 including latent fingerprints;

71           (3) Qualified entities shall notify applicants subject  
72 to enrollment in the National Rap Back program that the  
73 applicant's fingerprints, while retained, may continue to be  
74 compared against other fingerprints submitted or retained by  
75 the Federal Bureau of Investigation, including latent  
76 fingerprints;

77           (4) The criminal record review and Rap Back process  
78 described in this section shall be voluntary and conform to  
79 the requirements established in Pub. L. 92-544 and other  
80 applicable state or federal law. As a part of the  
81 registration, the qualified entity shall agree to comply  
82 with state and federal law and shall indicate so by signing  
83 an agreement approved by the Missouri state highway patrol.  
84 The Missouri state highway patrol may periodically audit  
85 qualified entities to ensure compliance with federal law and  
86 this section;

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

91           (6) Each request shall be accompanied by a reasonable  
92 fee, as provided in section 43.530, plus the amount  
93 required, if any, by the Federal Bureau of Investigation for  
94 the national criminal record review and enrollment in the  
95 National Rap Back program in compliance with applicable  
96 state or federal laws;

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

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

107           (9) This section shall not require the Missouri state  
108 highway patrol to make an eligibility determination on  
109 behalf of any qualified entity;

110           (10) The qualified entity shall notify the applicant,  
111 in writing, of his or her right to obtain a copy of any  
112 criminal record review, including the criminal history  
113 records, if any, contained in the report, and of the  
114 applicant's right to challenge the accuracy and completeness  
115 of any information contained in any such report and to  
116 obtain a determination as to the validity of such challenge  
117 before a final determination regarding the applicant is made  
118 by the qualified entity reviewing the criminal history  
119 information. A qualified entity that is required by law to  
120 apply screening criteria, including any right to contest or  
121 request an exemption from disqualification, shall apply such  
122 screening criteria to the state and national criminal  
123 history record information received from the Missouri state  
124 highway patrol for those applicants subject to the required  
125 screening; and

126           (11) Failure to obtain the information authorized  
127 under this section with respect to an applicant shall not be  
128 used as evidence in any negligence action against a

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

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

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

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

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- (a) Name;
- (b) Date of birth;
- (c) Height;
- (d) Weight;
- (e) Eye color;
- (f) Hair color;
- (g) Gender;
- (h) Race;
- (i) Place of birth;
- (j) Social Security number; and
- (k) The applicant's photo.

160           5. Any information received by an authorized state  
161 agency or a qualified entity pursuant to the provisions of  
162 this section shall be used solely for internal purposes in  
163 determining the suitability of an applicant. The  
164 dissemination of criminal history information from the  
165 Federal Bureau of Investigation beyond the authorized state  
166 agency or related governmental entity is prohibited. All  
167 criminal record check information shall be confidential and  
168 any person who discloses the information beyond the scope  
169 allowed is guilty of a class A misdemeanor.

170           6. A qualified entity enrolled in either the Missouri  
171 or National Rap Back programs shall be notified by the  
172 Missouri state highway patrol that a new arrest has been  
173 reported on an applicant who is employed, licensed, or  
174 otherwise under the purview of the qualified entity. Upon  
175 receiving the Rap Back notification, if the qualified entity  
176 deems that the applicant is still serving in an active  
177 capacity, the entity may request and receive the  
178 individual's updated criminal history record. This process  
179 shall only occur if:

180           (1) The agency has abided by all procedures and rules  
181 promulgated by the Missouri state highway patrol and Federal  
182 Bureau of Investigation regarding the Missouri and National  
183 Rap Back programs;

184           (2) The individual upon whom the Rap Back notification  
185 is being made has previously had a Missouri and national  
186 criminal record review completed for the qualified entity  
187 under this section [within the previous six years]; and

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

191           7. The highway patrol shall make available or approve  
192 the necessary forms, procedures, and agreements necessary to  
193 implement the provisions of this section.

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