

FIRST REGULAR SESSION

# HOUSE BILL NO. 1065

## 99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TRENT.

1822H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal sections 36.150, 36.280, 36.370, 36.380, 36.390, 36.470, 37.010, 105.055, 105.1110, 181.043, 207.085, 510.035, 621.075, and 630.167, RSMo, and to enact in lieu thereof twelve new sections relating to state merit employees.

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

Section A. Sections 36.150, 36.280, 36.370, 36.380, 36.390, 36.470, 37.010, 105.055, 105.1110, 181.043, 207.085, 510.035, 621.075, and 630.167, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 36.150, 36.280, 36.370, 36.380, 36.390, 37.010, 105.055, 105.1110, 181.043, 207.085, 510.035, and 630.167, to read as follows:

36.150. 1. Every appointment or promotion to a position covered by this chapter shall be made on the basis of merit as provided in this chapter. ~~[Demotions in and dismissals from employment shall be made for cause under rules and regulations of the board uniformly applicable to all positions of employment.]~~ No appointment, promotion, demotion or dismissal shall be made because of favoritism, prejudice or discrimination. The regulations shall prohibit discrimination in other phases of employment and personnel administration and shall provide such remedy as is required by federal merit system standards for grant-in-aid programs.

2. Political endorsements shall not be considered in connection with any such appointment.

3. No person shall use or promise to use, directly or indirectly, for any consideration whatsoever, any official authority or influence to secure or attempt to secure for any person an appointment or advantage in appointment to any such position or an increase in pay, promotion or other advantage in employment.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14           4. No person shall in any manner levy or solicit any financial assistance or subscription  
15 for any political party, candidate, political fund, or publication, or for any other political purpose,  
16 from any employee in a position subject to this chapter, and no such employee shall act as agent  
17 in receiving or accepting any such financial contribution, subscription, or assignment of pay. No  
18 person shall use, or threaten to use, coercive means to compel an employee to give such  
19 assistance, subscription, or support, nor in retaliation for the employee's failure to do so.

20           5. No such employee shall be a candidate for nomination or election to any partisan  
21 public office or nonpartisan office in conflict with that employee's duties unless such person  
22 resigns, or obtains a regularly granted leave of absence, from such person's position.

23           6. No person elected to partisan public office shall, while holding such office, be  
24 appointed to any position covered by this chapter.

25           7. Any officer or employee in a position subject to this chapter who purposefully violates  
26 any of the provisions of this section shall forfeit such office or position. ~~[If an appointing  
27 authority finds that such a violation has occurred, or is so notified by the director, this shall  
28 constitute cause for dismissal pursuant to section 36.390 and a final determination by the  
29 administrative hearing commission as to the occurrence of a violation.]~~

          36.280. 1. An appointing authority may at any time assign an employee from one  
2 position to another position in the same class in the appointing authority's division; except that,  
3 transfers of employees made because of a layoff, or shortage of work or funds which might  
4 require a layoff, shall be governed by the regulations. Upon making such an assignment the  
5 appointing authority shall forthwith give written notice of the appointing authority's action to the  
6 director. A transfer of an employee from a position in one division to a position in the same  
7 class in another division may be made with the approval of the director and of the appointing  
8 authorities of both divisions. No employee shall be transferred from a position in one class to  
9 a position in another class of a higher rank or for which there are substantially dissimilar  
10 requirements for appointment unless the employee is appointed to such latter position after  
11 certification of the employee's name from a register in accordance with the provisions of this  
12 chapter. ~~[Any change of an employee from a position in one class to a position in a class of  
13 lower rank shall be considered a demotion and shall be made only in accordance with the  
14 procedure prescribed by section 36.380 for cases of dismissal. An employee thus involuntarily  
15 demoted shall have the right to appeal to the administrative hearing commission pursuant to  
16 section 36.390.]~~

17           2. An employee who has successfully served at least one year in a position not subject  
18 to subsection 1 of section 36.030, but which is subject to section 36.031, may be transferred to  
19 a position subject to subsection 1 of section 36.030 in the same class with the approval of the  
20 director and of the appointing authorities of both divisions, provided he or she possesses the

21 qualifications and has successfully completed a noncompetitive examination for the position  
22 involved.

36.370. 1. An appointing authority may, for disciplinary purposes, suspend without pay  
2 any employee in his **or her** division for such length of time as he **or she** considers appropriate[;  
3 not exceeding twenty working days in any twelve-month period except that this limitation shall  
4 not apply in the event of a terminal suspension given in conjunction with a dismissal. In case  
5 of a suspension, the director shall be furnished with a statement in writing specifically setting  
6 forth the reasons for such suspension. Upon request, a copy of such statement shall be furnished  
7 to such employee. With the approval of the director, any employee may be suspended for a  
8 longer period pending the investigation or trial of any charges against him. Any regular  
9 employee who is suspended for more than five working days shall have the right to appeal to the  
10 administrative hearing commission as provided under section 36.390].

11 2. An appointing authority may not suspend without pay any employee in his **or her**  
12 division who is a member of the National Guard and is engaged in the performance of duty or  
13 training in the service of this state at the call of the governor and as ordered by the adjutant  
14 general, but shall grant a leave of absence from duty without loss of time, pay, regular leave,  
15 impairment of efficiency rating, or of any other rights or benefits, to which otherwise entitled,  
16 and shall pay that employee his **or her** salary or compensation for the entire period of absence  
17 for that purpose.

36.380. [~~An appointing authority may dismiss for cause any employee in his division  
2 occupying a position subject hereto when he considers that such action is required in the interests  
3 of efficient administration and that the good of the service will be served thereby. No dismissal  
4 of a regular employee shall take effect unless, prior to the effective date thereof, the appointing  
5 authority gives to such employee a written statement setting forth in substance the reason  
6 therefor and files a copy of such statement with the director. When it is not practicable to give  
7 the notice of dismissal to an employee in person, it may be sent to the employee by certified or  
8 registered mail, return receipt requested, at his last mailing address as shown in the personnel  
9 records of the appointing authority. Proof of refusal of the employee to accept delivery or the  
10 inability of postal authorities to deliver such mail shall be accepted as evidence that the required  
11 notice of dismissal has been given. If the director determines that the statement of reasons for  
12 the dismissal given by the appointing authority shows that such dismissal does not reflect  
13 discredit on the character or conduct of the employee, he may, upon request of the employee,  
14 approve reemployment under section 36.240, in any class in which the employee has held regular  
15 status. Any regular employee who is dismissed shall have the right to appeal to the  
16 administrative hearing commission as provided under section 36.390.] **All employment subject  
17 to this chapter shall be at will.**~~

36.390. 1. An applicant whose request for admission to any examination has been rejected by the director may appeal to the administrative hearing commission in writing within fifteen days of the mailing of the notice of rejection by the director, and in any event before the holding of the examination. The commission's decision on all matters of fact shall be final.

2. Applicants may be admitted to an examination pending a consideration of the appeal, but such admission shall not constitute the assurance of a passing grade in education and experience.

3. Any applicant who has taken an examination and who feels that he or she has not been dealt with fairly in any phase of the examination process may request that the director review his or her case. Such request for review of any examination shall be filed in writing with the director within fifteen days after the date on which notification of the results of the examination was mailed to the applicant. A candidate may appeal the decision of the director in writing to the administrative hearing commission. This appeal shall be filed with the administrative hearing commission within fifteen days after date on which notification of the decision of the director was mailed to the applicant. The commission's decision with respect to any changes shall be final, and shall be entered in the minutes. A correction in the rating shall not affect a certification or appointment which may have already been made from the register.

4. An eligible whose name has been removed from a register for any of the reasons specified in section 36.180 or in section 36.240 may appeal to the administrative hearing commission for reconsideration. Such appeal shall be filed in writing with the administrative hearing commission within fifteen days after the date on which notification was mailed to the eligible. The commission, after investigation, shall make its decision which shall be recorded in the minutes and the eligible shall be notified accordingly by the director.

~~5. [Any regular employee who is dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal in writing to the administrative hearing commission within thirty days after the effective date thereof, setting forth in substance the employee's reasons for claiming that the dismissal, suspension or demotion was for political, religious, or racial reasons, or not for the good of the service.]~~

~~6. The provisions for appeals provided in subsection 5 of this section for dismissals of regular merit employees may be adopted by nonmerit agencies of the state for any or all employees of such agencies.~~

~~7. Agencies not adopting the provisions for appeals provided in subsection 5 of this section shall adopt dismissal procedures substantially similar to those provided for merit employees. However, these procedures need not apply to employees in policy-making positions, or to members of military or law enforcement agencies.~~

36 ———8.] Hearings under this section shall be deemed to be a contested case and the procedures  
37 applicable to the processing of such hearings and determinations shall be those established by  
38 chapter 536. Decisions of the administrative hearing commission shall be final and binding  
39 subject to appeal by either party. Final decisions of the administrative hearing commission  
40 pursuant to this subsection shall be subject to review on the record by the circuit court pursuant  
41 to chapter 536.

37.010. 1. The governor, by and with the advice and consent of the senate, shall appoint  
2 a commissioner of administration, who shall head the "Office of Administration" which is hereby  
3 created. The commissioner of administration shall receive a salary as provided by law and shall  
4 also receive his or her actual and necessary expenses incurred in the discharge of his or her  
5 official duties. Before taking office, the commissioner of administration shall take and subscribe  
6 an oath or affirmation to support the Constitution of the United States and of this state, and to  
7 demean himself or herself faithfully in office. The commissioner shall also deposit with the  
8 governor a bond, with sureties to be approved by the governor, in the amount to be determined  
9 by the governor payable to the state of Missouri, conditioned on the faithful performance of the  
10 duties of his or her office. The premium of this bond shall be paid out of the appropriation for  
11 the office of the governor.

12 2. The governor shall appoint the commissioner of administration with the advice and  
13 consent of the senate. The commissioner shall be at least thirty years of age and must have been  
14 a resident and qualified voter of this state for the five years next preceding his **or her**  
15 appointment. He or she must be qualified by training and experience to assume the managerial  
16 and administrative functions of the office of commissioner of administration.

17 3. The commissioner of administration shall, by virtue of his or her office, without  
18 additional compensation, head the division of budget, the division of purchasing, the division  
19 of facilities management, design and construction, and the information technology services  
20 division. Whenever provisions of the constitution grant powers, impose duties or make other  
21 reference to the comptroller, they shall be construed as referring to the commissioner of  
22 administration.

23 4. The commissioner of administration shall provide the governor with such assistance  
24 in the supervision of the executive branch of state government as the governor requires and shall  
25 perform such other duties as are assigned to him or her by the governor or by law. The  
26 commissioner of administration shall work with other departments of the executive branch of  
27 state government to promote economy, efficiency and improved service in the transaction of state  
28 business. The commissioner of administration, with the approval of the governor, shall organize  
29 the work of the office of administration in such manner as to obtain maximum effectiveness of  
30 the personnel of the office. He **or she** may consolidate, abolish or reassign duties of positions

31 or divisions combined within the office of administration, except for the division of personnel.  
32 He or she may delegate specific duties to subordinates. These subordinates shall take the same  
33 oath as the commissioner and shall be covered by the bond of the director or by separate bond  
34 as required by the governor.

35 5. The personnel division, personnel director and personnel advisory board as provided  
36 in chapter 36 shall be in the office of administration. The personnel director and employees of  
37 the personnel division shall perform such duties as directed by the commissioner of  
38 administration for personnel work in agencies and departments of state government not covered  
39 by the merit system law to upgrade state employment and to improve the uniform quality of state  
40 employment.

41 6. The commissioner of administration shall prepare a complete inventory of all real  
42 estate, buildings and facilities of state government and an analysis of their utilization. Each year  
43 he or she shall formulate and submit to the governor a long-range plan for the ensuing five years  
44 for the repair, construction and rehabilitation of all state properties. The plan shall set forth the  
45 projects proposed to be authorized in each of the five years with each project ranked in the order  
46 of urgency of need from the standpoint of the state as a whole and shall be upgraded each year.  
47 Project proposals shall be accompanied by workload and utilization information explaining the  
48 need and purpose of each. Departments shall submit recommendations for capital improvement  
49 projects and other information in such form and at such times as required by the commissioner  
50 of administration to enable him or her to prepare the long-range plan. The commissioner of  
51 administration shall prepare the long-range plan together with analysis of financing available and  
52 suggestions for further financing for approval of the governor who shall submit it to the general  
53 assembly. The long-range plan shall include credible estimates for operating purposes as well  
54 as capital outlay and shall include program data to justify need for the expenditures included.  
55 The long-range plan shall be extended, revised and resubmitted in the same manner to  
56 accompany each executive budget. The appropriate recommendations for the period for which  
57 appropriations are to be made shall be incorporated in the executive budget for that period  
58 together with recommendations for financing. Each revised long-range plan shall provide a  
59 report on progress in the repair, construction and rehabilitation of state properties and of the  
60 operating purposes program for the preceding fiscal period in terms of expenditures and meeting  
61 program goals.

62 7. All employees of the office of administration, except the commissioner and not more  
63 than three other executive positions designated by the governor in an executive order, shall be  
64 subject to the provisions of chapter 36. The commissioner shall appoint all employees of the  
65 office of administration and may discharge the employees ~~[after proper hearing]~~, provided that

66 the employment and discharge conform to the practices governing selection and discharge of  
67 employees in accordance with the provisions of chapter 36.

68 8. The office of the commissioner of administration shall be in Jefferson City.

69 9. In case of death, resignation, removal from office or vacancy from any cause in the  
70 office of commissioner of administration, the governor shall take charge of the office and  
71 superintend the business thereof until a successor is appointed, commissioned and qualified.

105.055. 1. No supervisor or appointing authority of any state agency shall prohibit any  
2 employee of the agency from discussing the operations of the agency, either specifically or  
3 generally, with any member of the legislature, state auditor, attorney general, or any state official  
4 or body charged with investigating such alleged misconduct.

5 2. No supervisor or appointing authority of any state agency shall:

6 (1) Prohibit a state employee from or take any disciplinary action whatsoever against a  
7 state employee for the disclosure of any alleged prohibited activity under investigation or any  
8 related activity, or for the disclosure of information which the employee reasonably believes  
9 evidences:

10 (a) A violation of any law, rule or regulation; or

11 (b) Mismanagement, a gross waste of funds or abuse of authority, or a substantial and  
12 specific danger to public health or safety, if the disclosure is not specifically prohibited by law;  
13 or

14 (2) Require any such employee to give notice to the supervisor or appointing authority  
15 prior to making any such report.

16 3. This section shall not be construed as:

17 (1) Prohibiting a supervisor or appointing authority from requiring that an employee  
18 inform the supervisor or appointing authority as to legislative requests for information to the  
19 agency or the substance of testimony made, or to be made, by the employee to legislators on  
20 behalf of the employee to legislators on behalf of the agency;

21 (2) Permitting an employee to leave the employee's assigned work areas during normal  
22 work hours without following applicable rules and regulations and policies pertaining to leaves,  
23 unless the employee is requested by a legislator or legislative committee to appear before a  
24 legislative committee;

25 (3) Authorizing an employee to represent the employee's personal opinions as the  
26 opinions of a state agency; or

27 (4) Restricting or precluding disciplinary action taken against a state employee if: the  
28 employee knew that the information was false; the information is closed or is confidential under  
29 the provisions of the open meetings law or any other law; or the disclosure relates to the

30 employee's own violations, mismanagement, gross waste of funds, abuse of authority or  
31 endangerment of the public health or safety.

32 4. As used in this section, "disciplinary action" means any dismissal, demotion, transfer,  
33 reassignment, suspension, reprimand, warning of possible dismissal or withholding of work,  
34 whether or not the withholding of work has affected or will affect the employee's compensation.

35 5. ~~[Any employee may file an administrative appeal whenever the employee alleges that~~  
36 ~~disciplinary action was taken against the employee in violation of this section. The appeal shall~~  
37 ~~be filed with the administrative hearing commission; provided that the appeal shall be filed with~~  
38 ~~the appropriate agency review board or body of nonmerit agency employers which have~~  
39 ~~established appeal procedures substantially similar to those provided for merit employees in~~  
40 ~~subsection 5 of section 36.390. The appeal shall be filed within thirty days of the alleged~~  
41 ~~disciplinary action. Procedures governing the appeal shall be in accordance with chapter 536.~~  
42 ~~If the commission or appropriate review body finds that disciplinary action taken was~~  
43 ~~unreasonable, the commission or appropriate review body shall modify or reverse the agency's~~  
44 ~~action and order such relief for the employee as the commission considers appropriate. If the~~  
45 ~~commission finds a violation of this section, it may review and recommend to the appointing~~  
46 ~~authority that the violator be suspended on leave without pay for not more than thirty days or,~~  
47 ~~in cases of willful or repeated violations, may review and recommend to the appointing authority~~  
48 ~~that the violator forfeit the violator's position as a state officer or employee and disqualify the~~  
49 ~~violator for appointment to or employment as a state officer or employee for a period of not more~~  
50 ~~than two years. The decision of the commission or appropriate review body in such cases may~~  
51 ~~be appealed by any party pursuant to law.~~

52 ~~———6.]~~ Each state agency shall prominently post a copy of this section in locations where it  
53 can reasonably be expected to come to the attention of all employees of the agency.

54 ~~[7.]~~ 6. (1) ~~[In addition to the remedies in subsection 6 of this section,]~~ A person who  
55 alleges a violation of this section may bring a civil action for damages within ninety days after  
56 the occurrence of the alleged violation.

57 (2) A civil action commenced pursuant to this subsection may be brought in the circuit  
58 court for the county where the alleged violation occurred, the county where the complainant  
59 resides, or the county where the person against whom the civil complaint is filed resides.

60 (3) An employee must show by clear and convincing evidence that he or she or a person  
61 acting on his or her behalf has reported or was about to report, verbally or in writing, a prohibited  
62 activity or a suspected prohibited activity.

63 (4) A court, in rendering a judgment in an action brought pursuant to this section, shall  
64 order, as the court considers appropriate, actual damages, and may also award the complainant  
65 all or a portion of the costs of litigation, including reasonable attorney fees.



105.1110. ~~[Any public employee who is suspended or dismissed under the provisions~~  
2 ~~of section 105.1105 or 105.1108 shall have the right to appeal as provided under section 36.390~~  
3 ~~or under any appeal rights established by a public employer not subject to the provisions of~~  
4 ~~chapter 36 that are substantially similar to the rights established under section 36.390.]~~  
5 Personnel records of any public employee relating to suspension or termination for reasons  
6 specified in section 105.1105 or 105.1108 shall be closed records.

181.043. The secretary of state shall appoint a state librarian who shall administer the  
2 affairs of the Missouri state library under the rules and regulations of the secretary of state and  
3 who shall serve at the pleasure of the secretary of state. The state librarian shall be a graduate  
4 of an accredited college or university, and be graduated from an accredited library school, and  
5 shall have library experience. The state librarian shall appoint the personnel in connection with  
6 the various activities of the state library, subject to the approval of the secretary of state. ~~[The~~  
7 ~~provisions for appeals provided in section 36.390 for dismissals of regular merit employees shall~~  
8 ~~apply to the employees of the state library, that all staffs presently employed must be transferred~~  
9 ~~as regular state employees.]~~

207.085. ~~[1.]~~ Any employee of the children's division, including supervisory personnel  
2 and private contractors with the division, who is involved with child protective services and  
3 purposely, knowingly, and willfully violates a stated or written policy of the division, any rule  
4 promulgated by the division, or any state law directly related to the child abuse and neglect  
5 activities of the division shall be dismissed if the violation directly results in serious physical  
6 injury or death~~[, subject to the provisions of subsection 2 of this section]~~. The provisions of this  
7 section shall apply to merit system employees of the division, as well as all other employees of  
8 the division and private contractors with the division, and upon a showing of a violation, such  
9 employees shall be dismissed ~~[for cause, subject to the provisions of subsection 2 of this section,~~  
10 ~~and shall have the right of appeal pursuant to sections 36.380 and 36.390]~~. For purposes of this  
11 section, a "private contractor with the division" means any private entity or community action  
12 agency with the appropriate and relevant training and expertise in delivering services to children  
13 and their families as determined by the children's division, and capable of providing direct  
14 services and other family services for children in the custody of the children's division or any  
15 such entities or agencies that are receiving state moneys for such services.

16 ~~[2. The provisions of sections 660.019 to 660.021 shall apply to this section. If an~~  
17 ~~employee of the division or a private contractor with the division is responsible for caseload~~  
18 ~~assignments in excess of those required to attain accreditation by the Council for Accreditation~~  
19 ~~for Families and Children's Services, and the employee purposely, knowingly, and willfully~~  
20 ~~violates a stated or written policy of the division, any rule promulgated by the division, or any~~  
21 ~~state law directly related to the child abuse and neglect activities of the division and the violation~~

~~22 directly results in serious physical injury or death, the employee's good faith efforts to follow the~~  
~~23 stated or written policies of the division, the rules promulgated by the division, or the state laws~~  
~~24 directly related to the child abuse and neglect activities of the division shall be a mitigating factor~~  
~~25 in determining whether an employee of the division or a private contractor with the division is~~  
~~26 dismissed pursuant to subsection 1 of this section.]~~

510.035. 1. Except as provided in subsection 2 of this section, any visual or aural  
2 recordings or photographs of a minor who is alleged to be the victim of an offense under chapter  
3 566 created by or in the possession of a child assessment center, health care provider, or  
4 multidisciplinary team member shall not be copied or distributed to any person or entity, unless  
5 required by supreme court rule 25.03 or if a court orders such copying or distribution upon a  
6 showing of good cause after notice and a hearing and after considering the safety and privacy  
7 interests of any victim.

8 2. The following persons or entities may access or share any copies of visual or aural  
9 recordings or photographs as described in subsection 1 of this section for the following purposes:

10 (1) Multidisciplinary team members as part of an investigation, as well as for the  
11 provision of protective or preventive social services for minors and their families. For purposes  
12 of this section, multidisciplinary team members shall consist of representatives of law  
13 enforcement, the children's division, the prosecuting attorney, the child assessment center, the  
14 juvenile office, and the health care provider;

15 (2) Department of social services employees and their legal counsel as part of the  
16 provision of child protection as described in section 210.109, as well as for use in administrative  
17 proceedings as established by department regulations ~~[or through the administrative hearing~~  
18 ~~commission as provided under section 621.075];~~

19 (3) Department of mental health employees and their legal counsel as part of an  
20 investigation conducted under section 630.167, as well as for use in administrative proceedings  
21 as established by department regulations ~~[or through the administrative hearing commission as~~  
22 ~~provided under section 621.075];~~

23 (4) The office of child advocate as part of a review under section 37.710;

24 (5) The child abuse and neglect review board as part of a review under sections 210.152  
25 and 210.153; and

26 (6) The attorney general as part of a legal proceeding.

27 3. If a court orders the copying or distribution of visual or aural recordings or  
28 photographs as described in subsection 1 of this section, the order shall:

29 (1) Be limited solely to the use of the recordings or photographs for the purposes of a  
30 pending court proceeding or in preparation for a pending court proceeding;

31 (2) Prohibit further copying, reproduction, or distribution of the recordings or  
32 photographs; and

33 (3) Require, upon the final disposition of the case, the return of all copies to the health  
34 care provider, child assessment center or multidisciplinary team member that originally had  
35 possession of the recordings or photographs, or provide an affidavit to the health care provider,  
36 child assessment center, or multidisciplinary team member that originally had possession of the  
37 recordings or photographs certifying that all copies have been destroyed.

38 4. Nothing in this section shall prohibit multidisciplinary team members from exercising  
39 discretion to grant access to viewing, but not copying, the visual or aural recordings or  
40 photographs.

630.167. 1. Upon receipt of a report the department or the department of health and  
2 senior services, if such facility or program is licensed pursuant to chapter 197, shall initiate an  
3 investigation within twenty-four hours. The department of mental health shall complete all  
4 investigations within sixty days, unless good cause for the failure to complete the investigation  
5 is documented.

6 2. If the investigation indicates possible abuse or neglect of a patient, resident or client,  
7 the investigator shall refer the complaint together with the investigator's report to the department  
8 director for appropriate action. If, during the investigation or at its completion, the department  
9 has reasonable cause to believe that immediate removal from a facility not operated or funded  
10 by the department is necessary to protect the residents from abuse or neglect, the department or  
11 the local prosecuting attorney may, or the attorney general upon request of the department shall,  
12 file a petition for temporary care and protection of the residents in a circuit court of competent  
13 jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to  
14 issue an ex parte order granting the department authority for the temporary care and protection  
15 of the resident for a period not to exceed thirty days.

16 3. (1) Except as otherwise provided in this section, reports referred to in section 630.165  
17 and the investigative reports referred to in this section shall be confidential, shall not be deemed  
18 a public record, and shall not be subject to the provisions of section 109.180 or chapter 610.  
19 Investigative reports pertaining to abuse and neglect shall remain confidential until a final report  
20 is complete, subject to the conditions contained in this section. Final reports of substantiated  
21 abuse or neglect issued on or after August 28, 2007, are open and shall be available for release  
22 in accordance with chapter 610. The names and all other identifying information in such final  
23 substantiated reports, including diagnosis and treatment information about the patient, resident,  
24 or client who is the subject of such report, shall be confidential and may only be released to the  
25 patient, resident, or client who has not been adjudged incapacitated under chapter 475, the  
26 custodial parent or guardian parent, or other guardian of the patient, resident or client. The

27 names and other descriptive information of the complainant, witnesses, or other persons for  
28 whom findings are not made against in the final substantiated report shall be confidential and not  
29 deemed a public record. Final reports of unsubstantiated allegations of abuse and neglect shall  
30 remain closed records and shall only be released to the parents or other guardian of the patient,  
31 resident, or client who is the subject of such report, patient, resident, or client and the department  
32 vendor, provider, agent, or facility where the patient, resident, or client was receiving department  
33 services at the time of the unsubstantiated allegations of abuse and neglect, but the names and  
34 any other descriptive information of the complainant or any other person mentioned in the  
35 reports shall not be disclosed unless such complainant or person specifically consents to such  
36 disclosure. Requests for final reports of substantiated or unsubstantiated abuse or neglect from  
37 a patient, resident or client who has not been adjudged incapacitated under chapter 475 may be  
38 denied or withheld if the director of the department or his or her designee determines that such  
39 release would jeopardize the person's therapeutic care, treatment, habilitation, or rehabilitation,  
40 or the safety of others and provided that the reasons for such denial or withholding are submitted  
41 in writing to the patient, resident or client who has not been adjudged incapacitated under chapter  
42 475. All reports referred to in this section shall be admissible in any judicial proceedings ~~or~~  
43 ~~hearing in accordance with section 621.075]~~ or any administrative hearing before the director of  
44 the department of mental health, or the director's designee. All such reports may be disclosed  
45 by the department of mental health to law enforcement officers and public health officers, but  
46 only to the extent necessary to carry out the responsibilities of their offices, and to the department  
47 of social services, and the department of health and senior services, and to boards appointed  
48 pursuant to sections 205.968 to 205.990 that are providing services to the patient, resident or  
49 client as necessary to report or have investigated abuse, neglect, or rights violations of patients,  
50 residents or clients provided that all such law enforcement officers, public health officers,  
51 department of social services' officers, department of health and senior services' officers, and  
52 boards shall be obligated to keep such information confidential.

53 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,  
54 reports and minutes of committees of health care professionals as defined in section 537.035 or  
55 mental health professionals as defined in section 632.005 who have the responsibility to evaluate,  
56 maintain, or monitor the quality and utilization of mental health services are privileged and shall  
57 not be subject to the discovery, subpoena or other means of legal compulsion for their release  
58 to any person or entity or be admissible into evidence into any judicial or administrative action  
59 for failure to provide adequate or appropriate care. Such committees may exist, either within  
60 department facilities or its agents, contractors, or vendors, as applicable. Except as otherwise  
61 provided in this section, no person who was in attendance at any investigation or committee  
62 proceeding shall be permitted or required to disclose any information acquired in connection

63 with or in the course of such proceeding or to disclose any opinion, recommendation or  
64 evaluation of the committee or board or any member thereof; provided, however, that  
65 information otherwise discoverable or admissible from original sources is not to be construed  
66 as immune from discovery or use in any proceeding merely because it was presented during  
67 proceedings before any committee or in the course of any investigation, nor is any member,  
68 employee or agent of such committee or other person appearing before it to be prevented from  
69 testifying as to matters within their personal knowledge and in accordance with the other  
70 provisions of this section, but such witness cannot be questioned about the testimony or other  
71 proceedings before any investigation or before any committee.

72 (3) Nothing in this section shall limit authority otherwise provided by law of a health  
73 care licensing board of the state of Missouri to obtain information by subpoena or other  
74 authorized process from investigation committees or to require disclosure of otherwise  
75 confidential information relating to matters and investigations within the jurisdiction of such  
76 health care licensing boards; provided, however, that such information, once obtained by such  
77 board and associated persons, shall be governed in accordance with the provisions of this  
78 subsection.

79 (4) Nothing in this section shall limit authority otherwise provided by law in  
80 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the  
81 entity or agency authorized to implement a system to protect and advocate the rights of persons  
82 with developmental disabilities under the provisions of 42 U.S.C. Sections 15042 to 15044 and  
83 the entity or agency authorized to implement a system to protect and advocate the rights of  
84 persons with mental illness under the provisions of 42 U.S.C. Section 10801. In addition,  
85 nothing in this section shall serve to negate assurances that have been given by the governor of  
86 Missouri to the U.S. Administration on Developmental Disabilities, Office of Human  
87 Development Services, Department of Health and Human Services concerning access to records  
88 by the agency designated as the protection and advocacy system for the state of Missouri.  
89 However, such information, once obtained by such entity or agency, shall be governed in  
90 accordance with the provisions of this subsection.

91 4. Any person who makes a report pursuant to this section or who testifies in any  
92 administrative or judicial proceeding arising from the report shall be immune from any civil  
93 liability for making such a report or for testifying unless such person acted in bad faith or with  
94 malicious purpose.

95 5. (1) Within five working days after a report required to be made pursuant to this  
96 section is received, the person making the report shall be notified in writing of its receipt and of  
97 the initiation of the investigation.

98 (2) For investigations alleging neglect of a patient, resident, or client, the guardian of  
99 such patient, resident, or client shall be notified of:

100 (a) The investigation and given an opportunity to provide information to the  
101 investigators;

102 (b) The results of the investigation within five working days of the completion of the  
103 investigation and decision of the department of mental health of the results of the investigation.

104 6. The department of mental health shall obtain two independent reviews of all patient,  
105 resident, or client deaths that it investigates.

106 7. No person who directs or exercises any authority in a residential facility, day program  
107 or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client  
108 or employee because he or she or any member of his or her family has made a report of any  
109 violation or suspected violation of laws, ordinances or regulations applying to the facility which  
110 he or she has reasonable cause to believe has been committed or has occurred.

111 ~~[8. Any person who is discharged as a result of an administrative substantiation of~~  
112 ~~allegations contained in a report of abuse or neglect may, after exhausting administrative~~  
113 ~~remedies as provided in chapter 36, appeal such decision to the circuit court of the county in~~  
114 ~~which such person resides within ninety days of such final administrative decision. The court~~  
115 ~~may accept an appeal up to twenty-four months after the party filing the appeal received notice~~  
116 ~~of the department's determination, upon a showing that:~~

117 ~~—— (1) Good cause exists for the untimely commencement of the request for the review;~~

118 ~~—— (2) If the opportunity to appeal is not granted it will adversely affect the party's~~  
119 ~~opportunity for employment; and~~

120 ~~—— (3) There is no other adequate remedy at law.]~~

2 ~~[36.470. 1. Whenever any employee of the state of Missouri, who is~~  
3 ~~employed under the provisions of this chapter, is discharged from or shall~~  
4 ~~voluntarily quit such employment, the head of the department or division~~  
5 ~~employing the employee shall upon written request of the employee, if the~~  
6 ~~employment has been for a period of at least ninety days, issue to the employee,~~  
7 ~~upon his written request therefor, a letter setting forth the nature and character of~~  
8 ~~service rendered by the employee, the duration thereof, and truly stating for what~~  
9 ~~cause, if any, the employee has been discharged from or has quit such~~  
10 ~~employment.~~

11 ~~2. The head of a department or division affected by this section, who~~  
12 ~~refuses to comply with this section, is guilty of a misdemeanor, and upon~~  
13 ~~conviction thereof shall be punished by a fine not to exceed one hundred dollars.~~

14 ~~3. There shall be no civil liability for refusing or failing to furnish the~~  
15 ~~letter herein provided except for willful and malicious refusal to furnish such~~  
16 ~~letter.]~~

~~[621.075. 1. Except as otherwise provided by law, any employee with merit status who has been dismissed or involuntarily demoted for cause or suspended for more than five working days shall have the right to appeal to the administrative hearing commission. Any such person shall be entitled to a hearing before the administrative hearing commission by the filing of an appeal setting forth in substance the employee's reasons for claiming that the dismissal, suspension, or demotion was for political, religious, or racial reasons, or not for the good of the service with the administrative hearing commission within thirty days after the effective date of the action. The decision of the appointing authority shall contain a notice of the right of appeal in substantially the following language:-~~

~~"Any employee with regular status who has been dismissed or involuntarily demoted for cause or suspended for more than five working days may appeal to the administrative hearing commission. To appeal, you must file an appeal with the administrative hearing commission within thirty days after the effective date of the decision. If any such appeal is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission."~~

~~2. The procedures applicable to the processing of such hearings and determinations shall be those established by chapter 536. The administrative hearing commission may hold hearings or may make decisions based on stipulation of the parties, consent order, agreed settlement, or by disposition in the nature of default judgment, judgment on the pleadings, or summary determination, in accordance with the rules and procedures of the administrative hearing commission. No hearing shall be public unless requested to be public by the employee. The administrative hearing commission shall maintain a transcript of all testimony and proceedings in hearings governed by this section, and decisions of the administrative hearing commission under this section shall be binding subject to appeal by either party. The administrative hearing commission may make any one of the following appropriate orders:-~~

~~(1) Order the reinstatement of the employee to the employee's former position;~~

~~(2) Sustain the dismissal of such employee;~~

~~(3) Except as provided in subdivisions (1) and (2) of this subsection, the administrative hearing commission may sustain the dismissal, but may order the director of personnel to recognize reemployment rights for the dismissed employee pursuant to section 36.240, in an appropriate class or classes, or may take steps to effect the transfer of such employee to an appropriate position in the same or another division of service.-~~

~~3. After an order of reinstatement has been issued and all parties have let the time for appeal lapse or have filed an appeal and that appeal process has become final and the order of reinstatement has been affirmed, the administrative~~

44 ~~hearing commission shall commence a separate action to determine the date of~~  
45 ~~reinstatement and the amount of back pay owed to the employee. This action~~  
46 ~~may be done by hearing, or by affidavit, depositions, or stipulations, or by~~  
47 ~~agreement on the amount of back pay owed. No hearing shall be public unless~~  
48 ~~requested to be public by the employee.]~~

✓