

FIRST REGULAR SESSION

HOUSE BILL NO. 546

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LADD BAKER, HOSMER (Co-sponsors),
LOWE AND CAMPBELL.

Read 1st time January 25, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1311L.02I

AN ACT

To repeal section 660.317, RSMo 2000, relating to criminal background checks for certain employees, and to enact in lieu thereof one new section relating to the same subject, with penalty provisions.

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

Section A. Section 660.317, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 660.317, to read as follows:

660.317. 1. For the purposes of this section, the term "provider" means any person, corporation or association who:

- (1) Is licensed as an operator pursuant to chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs nurses or nursing assistants for temporary or intermittent placement in health care facilities; [or]
- (4) **Employs persons who provide personal care assistance services. For purposes of this section, provider does not include the individual receiving personal care assistance or any member of such individual's immediate family;**
- (5) Is an entity licensed pursuant to chapter 197, RSMo; **or**
- ~~(5)~~ (6) Is a public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department of mental health.

2. For the purpose of this section "patient or resident" has the same meaning as such term is defined in section 43.540, RSMo.

3. Beginning August 28, 1997, not later than two working days of hiring any person for

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

16 a full-time, part-time or temporary position to have contact with any patient or resident the
17 provider shall, or in the case of temporary employees hired through an employment agency, the
18 employment agency shall prior to sending a temporary employee to a provider:

19 (1) Request a criminal background check as provided in section 43.540, RSMo.
20 Completion of an inquiry to the highway patrol for criminal records that are available for
21 disclosure to a provider for the purpose of conducting an employee criminal records background
22 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
23 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection
24 shall not be construed to exempt a provider from further inquiry pursuant to common law
25 requirements governing due diligence; and

26 (2) Make an inquiry to the department of social services, whether the person is listed on
27 the employee disqualification list as provided in section 660.315.

28 4. When the provider requests a criminal background check pursuant to section 43.530,
29 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
30 of such record check.

31 5. An applicant for a position to have contact with patients or residents of a provider
32 shall:

33 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
34 request a criminal records review;

35 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
36 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
37 and shall include any suspended imposition of sentence, any suspended execution of sentence
38 or any period of probation or parole; and

39 (3) Disclose if the applicant is listed on the employee disqualification list as provided
40 in section 660.315.

41 6. An applicant who knowingly fails to disclose his criminal history as required in
42 subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
43 A misdemeanor if the provider knowingly hires a person to have contact with patients or
44 residents and the person has been convicted of, pled guilty to or nolo contendere in this state or
45 any other state or has been found guilty of a crime, which if committed in Missouri would be a
46 class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection
47 3 of section 198.070, RSMo, or section 568.020, RSMo. **Any second or subsequent violation**
48 **of this section is a class D felony.**

49 7. The highway patrol shall examine whether protocols can be developed to allow a
50 provider to request a statewide fingerprint criminal records review check through local law
51 enforcement agencies.

52 8. A provider may use a private investigatory agency rather than the highway patrol to
53 do a criminal history records review check, and alternatively, the applicant pays the private
54 investigatory agency such fees as the provider and such agency shall agree.

55 9. The department of social services shall promulgate rules and regulations to waive the
56 hiring restrictions pursuant to this section for good cause. For purposes of this section, "good
57 cause" means the department has made a determination by examining the employee's prior work
58 history and other relevant factors that such employee does not present a risk to the health or
59 safety of residents.