



Mr. Speaker: I am instructed by the Senate to inform the House of

5726S09.01F

Representatives that the Senate has taken up and passed

SS SCS HCS HB 1854

entitled:

AN ACT

To repeal sections 209.150, 209.152, 209.200, 209.202, 288.034, 301.143, and 304.028, RSMo, and to enact in lieu thereof eight new sections relating to services provided to individuals with disabilities, with penalty provisions, an expiration date for a certain section and an emergency clause for a certain section.

WITH SA 1 & SA 2

EC. ADOPTED

In which the concurrence of the House is respectfully requested.

Respectfully,

Terry L. Spieler  
Secretary of the Senate

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MAY 18 2012

CHIEF CLERK



SENATE AMENDMENT NO. 1

Offered by Rupp of 2

Amend SS/SCS/HCS/House Bill No. 1854, Page 26, Section 288.034, Line 13,

2 by inserting at the end of said line the following: "However, in  
3 the event an employment relationship exists between the provider  
4 and any worker as determined under this chapter, the services  
5 performed by such worker shall be deemed to be employment if the  
6 provider is an organization described in Section 501(c)(3) of the  
7 Internal Revenue Code, any governmental entity, or a federally  
8 recognized Indian tribe."

*approved 5-18-12*  
*adopted 5-18-12*



# SENATE AMENDMENT NO. 2

Offered by Mayer of \_\_\_\_\_

Amend SS/SCS/HCS/House Bill No. 1854, Page 32, Section 304.028, Line 19

2 of said page, by inserting after all of said line the following:

3 "660.315. 1. After an investigation and a determination  
4 has been made to place a person's name on the employee  
5 disqualification list, that person shall be notified in writing  
6 mailed to his or her last known address that:

7 (1) An allegation has been made against the person, the  
8 substance of the allegation and that an investigation has been  
9 conducted which tends to substantiate the allegation;

10 (2) The person's name will be included in the employee  
11 disqualification list of the department;

12 (3) The consequences of being so listed including the  
13 length of time to be listed; and

14 (4) The person's rights and the procedure to challenge the  
15 allegation.

16 2. If no reply has been received within thirty days of  
17 mailing the notice, the department may include the name of such  
18 person on its list. The length of time the person's name shall  
19 appear on the employee disqualification list shall be determined  
20 by the director or the director's designee, based upon the  
21 criteria contained in subsection 9 of this section.

22 3. If the person so notified wishes to challenge the

*Approved 5-18-12*  
*adapted 5-12-12*

1 allegation, such person may file an application for a hearing  
2 with the department. The department shall grant the application  
3 within thirty days after receipt by the department and set the  
4 matter for hearing, or the department shall notify the applicant  
5 that, after review, the allegation has been held to be unfounded  
6 and the applicant's name will not be listed.

7 4. If a person's name is included on the employee  
8 disqualification list without the department providing notice as  
9 required under subsection 1 of this section, such person may file  
10 a request with the department for removal of the name or for a  
11 hearing. Within thirty days after receipt of the request, the  
12 department shall either remove the name from the list or grant a  
13 hearing and set a date therefor.

14 5. Any hearing shall be conducted in the county of the  
15 person's residence by the director of the department or the  
16 director's designee. The provisions of chapter 536 for a  
17 contested case except those provisions or amendments which are in  
18 conflict with this section shall apply to and govern the  
19 proceedings contained in this section and the rights and duties  
20 of the parties involved. The person appealing such an action  
21 shall be entitled to present evidence, pursuant to the provisions  
22 of chapter 536, relevant to the allegations.

23 6. Upon the record made at the hearing, the director of the  
24 department or the director's designee shall determine all  
25 questions presented and shall determine whether the person shall  
26 be listed on the employee disqualification list. The director of  
27 the department or the director's designee shall clearly state the  
28 reasons for his or her decision and shall include a statement of  
29 findings of fact and conclusions of law pertinent to the

1 questions in issue.

2 7. A person aggrieved by the decision following the hearing  
3 shall be informed of his or her right to seek judicial review as  
4 provided under chapter 536. If the person fails to appeal the  
5 director's findings, those findings shall constitute a final  
6 determination that the person shall be placed on the employee  
7 disqualification list.

8 8. A decision by the director shall be inadmissible in any  
9 civil action brought against a facility or the in-home services  
10 provider agency and arising out of the facts and circumstances  
11 which brought about the employment disqualification proceeding,  
12 unless the civil action is brought against the facility or the  
13 in-home services provider agency by the department of health and  
14 senior services or one of its divisions.

15 9. The length of time the person's name shall appear on the  
16 employee disqualification list shall be determined by the  
17 director of the department of health and senior services or the  
18 director's designee, based upon the following:

19 (1) Whether the person acted recklessly or knowingly, as  
20 defined in chapter 562;

21 (2) The degree of the physical, sexual, or emotional injury  
22 or harm; or the degree of the imminent danger to the health,  
23 safety or welfare of a resident or in-home services client;

24 (3) The degree of misappropriation of the property or  
25 funds, or falsification of any documents for service delivery of  
26 an in-home services client;

27 (4) Whether the person has previously been listed on the  
28 employee disqualification list;

29 (5) Any mitigating circumstances;

1 (6) Any aggravating circumstances; and

2 (7) Whether alternative sanctions resulting in conditions  
3 of continued employment are appropriate in lieu of placing a  
4 person's name on the employee disqualification list. Such  
5 conditions of employment may include, but are not limited to,  
6 additional training and employee counseling. Conditional  
7 employment shall terminate upon the expiration of the designated  
8 length of time and the person's submitting documentation which  
9 fulfills the department of health and senior services'  
10 requirements.

11 10. The removal of any person's name from the list under  
12 this section shall not prevent the director from keeping records  
13 of all acts finally determined to have occurred under this  
14 section.

15 11. The department shall provide the list maintained  
16 pursuant to this section to other state departments upon request  
17 and to any person, corporation, organization, or association who:

18 (1) Is licensed as an operator under chapter 198;

19 (2) Provides in-home services under contract with the  
20 department;

21 (3) Employs nurses and nursing assistants for temporary or  
22 intermittent placement in health care facilities;

23 (4) Is approved by the department to issue certificates for  
24 nursing assistants training;

25 (5) Is an entity licensed under chapter 197; or

26 (6) Is a recognized school of nursing, medicine, or other  
27 health profession for the purpose of determining whether students  
28 scheduled to participate in clinical rotations with entities  
29 described in subdivision (1), (2), or (5) of this subsection are



1 included in the employee disqualification list. The department  
2 shall inform any person listed above who inquires of the  
3 department whether or not a particular name is on the list. The  
4 department may require that the request be made in writing.

5 12. No person, corporation, organization, or association  
6 who received the employee disqualification list under  
7 subdivisions (1) to (5) of subsection 11 of this section shall  
8 knowingly employ any person who is on the employee  
9 disqualification list. Any person, corporation, organization, or  
10 association who received the employee disqualification list under  
11 subdivisions (1) to (5) of subsection 11 of this section, or any  
12 person responsible for providing health care service, who  
13 declines to employ or terminates a person whose name is listed in  
14 this section shall be immune from suit by that person or anyone  
15 else acting for or in behalf of that person for the failure to  
16 employ or for the termination of the person whose name is listed  
17 on the employee disqualification list.

18 13. (1) Any employer [who is] required to [discharge an  
19 employee because the employee was placed on a disqualification  
20 list maintained by the department of health and senior services  
21 after the date of hire] deny employment to an applicant or  
22 discharge an employee, provisional or otherwise, as a result of  
23 information obtained through any portion of the background  
24 screening and employment eligibility determination process under  
25 section 210.903, or subsequent, periodic screenings, shall not be  
26 liable in any action brought by the applicant or employee  
27 relating to discharge where the employer is required by law to  
28 terminate the employee, provisional or otherwise, and shall not  
29 be charged for unemployment insurance benefits based on wages

1 paid to the employee for work prior to the date of discharge,  
2 pursuant to section 288.100.

3 (2) Notwithstanding subsections 3 and 5 of section 288.090,  
4 an employer shall not be charged for unemployment insurance  
5 benefits based on wages paid to the employee or an employer  
6 making payments in lieu of contributions for work prior to the  
7 date of discharge, pursuant to section 288.100, if the employer  
8 terminated the employee because the employee:

9 (a) Has been found guilty of, pled guilty or nolo  
10 contendere in this state or any other state of a crime as listed  
11 in subsection 6 of section 660.317;

12 (b) Was placed on the employee disqualification list under  
13 this section, after the date of hire;

14 (c) Was placed on the employee disqualification registry  
15 maintained by the department of mental health, after the date of  
16 hire;

17 (d) Has a disqualifying finding under this section, section  
18 660.317, or is on any of the background check lists in the family  
19 care safety registry under sections 210.900 to 210.936; or

20 (e) Was denied a good cause waiver as provided for in  
21 subsection 10 of section 660.317.

22  
23 The benefits paid to the employee shall not be attributable to  
24 service in the employ of the employer required to discharge an  
25 employee under the provisions of this subdivision and shall be  
26 deemed as such under the unemployment compensation laws of this  
27 state.

28 14. Any person who has been listed on the employee  
29 disqualification list may request that the director remove his or

1 her name from the employee disqualification list. The request  
2 shall be written and may not be made more than once every twelve  
3 months. The request will be granted by the director upon a clear  
4 showing, by written submission only, that the person will not  
5 commit additional acts of abuse, neglect, misappropriation of the  
6 property or funds, or the falsification of any documents of  
7 service delivery to an in-home services client. The director may  
8 make conditional the removal of a person's name from the list on  
9 any terms that the director deems appropriate, and failure to  
10 comply with such terms may result in the person's name being  
11 relisted. The director's determination of whether to remove the  
12 person's name from the list is not subject to appeal."; and

13 Further amend the title and enacting clause accordingly.

