

FIRST REGULAR SESSION

# HOUSE BILL NO. 609

99TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE HAAHR.

1377H.011

D. ADAM CRUMBLISS, Chief Clerk

---

## AN ACT

To repeal section 324.001, RSMo, and to enact in lieu thereof one new section relating to the division of professional registration.

---

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

Section A. Section 324.001, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 324.001, to read as follows:

324.001. 1. **(1) The purpose of sections 324.001 to 324.1109 is to promote the general welfare by establishing guidelines for the regulation of occupations and professions not regulated prior to January 1, 2018, and those occupations and professions regulated prior to January 1, 2018, that seek to substantially increase their scope of practice.**

**(2) All individuals may engage in the occupation of their choice, free from unreasonable government regulation. The state shall not impose a substantial burden on an individual's pursuit of their occupation or profession unless there is a reasonable interest for the state to protect the general welfare. If such an interest exists, the regulation adopted by the state shall be the least restrictive type of regulation consistent with the public interest to be protected.**

**(3) All bills introduced in the legislature to regulate an occupation or profession shall be reviewed according to the following criteria. An occupation or profession shall be regulated by the state if:**

**(a) Unregulated practice could cause harm and endanger the general welfare and the potential for further harm and endangerment is recognizable and not remote or dependent upon tenuous argument;**

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.

17           **(b) The public can reasonably be expected to benefit from an assurance of personal**  
18 **qualifications; and**

19           **(c) The general welfare cannot be sufficiently protected by other means.**

20           **(4) After evaluating the criteria in subdivision (3) of this subsection and considering**  
21 **governmental, economic, and societal costs and benefits, if the legislature finds that the**  
22 **state has a reasonable interest in regulating an occupation or profession not previously**  
23 **regulated by law, the most efficient form of regulation shall be implemented, consistent**  
24 **with the need to protect the general welfare and this section if:**

25           **(a) The threat to the general welfare resulting from the practitioner's services is**  
26 **easily predictable, such that the regulation shall implement a system of insurance, bonding,**  
27 **or registration;**

28           **(b) The consumer has challenges accessing credentialing information or possesses**  
29 **significantly less information on how to report abuses such that the practitioner puts the**  
30 **consumer in a disadvantageous position relative to the practitioner to judge the quality of**  
31 **the practitioner's services, the regulation should implement a system of certification; or**

32           **(c) Other regulatory structures, such as bonding, insurance, registration, and**  
33 **certification insufficiently protect the general welfare from recognizable harm, the**  
34 **regulation shall implement a system of licensing.**

35           **2. For the purposes of this section, the following terms mean:**

36           **(1) "Applicant group", any occupational or professional group or organization, any**  
37 **individual, or any other interested party that proposes that any occupation or profession**  
38 **not presently regulated be regulated or proposes to substantially increase the scope of**  
39 **practice of the occupation or profession;**

40           **(2) "Certification", a program in which the government grants nontransferable**  
41 **recognition to an individual who meets personal qualifications established by a legislative**  
42 **body. Upon approval, the individual may use certified as a designated title. This term shall**  
43 **not be synonymous with an occupational license;**

44           **(3) "Department", the department of insurance, financial institutions and professional**  
45 **registration;**

46           ~~[(2)]~~ **(4) "Director", the director of the division of professional registration; ~~[and]~~**

47           ~~[(3)]~~ **(5) "Division", the division of professional registration;**

48           **(6) "General welfare", the concern of the government for the health, peace,**  
49 **morality, and safety of its residents;**

50           **(7) "Lawful occupation", a course of conduct, pursuit, or profession that includes**  
51 **the sale of goods or services that are not themselves illegal to sell irrespective of whether**  
52 **the individual selling them is subject to an occupational regulation;**

53           **(8) "Least restrictive type of occupational regulations", in order from least to most**  
54 **restrictive:**

55           **(a) Bonding or insurance;**

56           **(b) Registration;**

57           **(c) Certification;**

58           **(d) Occupational license;**

59           **(9) "Legislative committees of reference", the standing legislative committees**  
60 **designated by the respective rules committees of the senate and house of representatives**  
61 **to consider proposed legislation to regulate occupation, or professions not previously**  
62 **regulated or those seeking to substantially increase their scope of practice;**

63           **(10) "Occupational license", a nontransferable authorization in law for an**  
64 **individual to perform a lawful occupation for compensation based on meeting personal**  
65 **qualifications established by a legislative body. It shall be prohibited for an individual who**  
66 **does not possess an occupational license to perform the occupation for compensation;**

67           **(11) "Occupational regulation", a statute, ordinance, rule, practice, policy, or other**  
68 **law requiring an individual to possess certain personal qualifications to work in a lawful**  
69 **occupation;**

70           **(12) "Personal qualifications", criteria related to an individual's personal**  
71 **background, including completion of an approved educational program, satisfactory**  
72 **performance on an examination, work experience, criminal history, and completion of**  
73 **continuing education;**

74           **(13) "Practitioner", an individual who has achieved knowledge and skill by**  
75 **practice and is actively engaged in a specified occupation or profession;**

76           **(14) "Public member", an individual who is not currently, and has never been in**  
77 **the past, a member or spouse of a member of the occupation or profession being regulated**  
78 **or an individual who does not currently have and has never in the past had a material**  
79 **financial interest in either the rendering of the occupation or professional service being**  
80 **regulated or an activity directly related to the occupation or profession being regulated;**

81           **(15) "Registration", a requirement established by the legislature in which a person:**

82           **(a) Submits notification to a state agency; and**

83           **(b) May use "registered" as a designated title.**

84

85 **Notification may include the person's name and address, the person's agent for service of**  
86 **process, the location of the activity to be performed, and a description of the service the**  
87 **person provides. Registration may include a requirement to post a bond but does not**  
88 **include education or experience requirements. Nonregistered persons shall not perform the**

89 occupation for compensation or use registered as a designated title. The term registration  
90 shall not be synonymous with an occupational license;

91 (16) "Regulatory entity", any board, commission, agency, division, or other unit  
92 or subunit of state government which regulates one or more professions, occupations,  
93 industries, businesses, or other endeavors in this state;

94 (17) "State agency", every state office, department, board, commission, regulatory  
95 entity, and agency of the state, and, if provided by law, programs and activities involving  
96 less than the full responsibility of a state agency;

97 (18) "Substantial burden", a requirement in an occupational regulation that  
98 imposes significant difficulty or cost on an individual seeking to enter into or continue in  
99 a lawful occupation and is more than an incidental burden.

100 [2-] 3. After January 1, 2018, applicant groups shall explain each of the following  
101 factors to the extent requested by the legislative committees of reference:

102 (1) A description of the professional or occupational group proposed for regulation  
103 or expansion of regulation, including the number of individuals or business entities that  
104 would be subject to regulation, the names and addresses of associations, organizations, and  
105 other groups representing the practitioners, and an estimate of the number of practitioners  
106 in each group;

107 (2) Whether practice of the profession or occupation proposed for regulation or  
108 expansion of regulation requires such a specialized skill that the public is not qualified to  
109 select a competent practitioner without assurances that minimum qualifications have been  
110 met;

111 (3) The nature and extent of potential harm to the public if the profession or  
112 occupation is not regulated, the extent to which there is a threat to the general welfare and  
113 production of evidence of potential harm, including a description of any complaints filed  
114 with state law enforcement authorities, courts, departmental agencies, other professional  
115 or occupational boards, and professional and occupational associations that have been  
116 lodged against practitioners of the profession or occupation in this state within the past five  
117 years;

118 (4) A description of the voluntary efforts made by practitioners of the profession  
119 or occupation to protect the public through self-regulation, private certifications,  
120 membership in professional or occupational associations, or academic credentials and a  
121 statement of why these efforts are inadequate to protect the public;

122 (5) The extent to which regulation or expansion of regulation of the profession or  
123 occupation will increase the cost of goods or services provided by practitioners and the

124 overall cost-effectiveness and economic impact of the proposed regulation, including the  
125 direct cost to the government and the indirect costs to consumers;

126 (6) The extent to which regulation or expansion of regulation of the profession or  
127 occupation would increase or decrease the availability of services to the public;

128 (7) The extent to which existing legal remedies are inadequate to prevent or redress  
129 the kinds of harm potentially resulting from nonregulation and whether regulation can be  
130 provided through an existing state agency or in conjunction with presently regulated  
131 practitioners;

132 (8) Why bonding and insurance, registration, certification, license to practice or  
133 another type of regulation is being proposed, why that regulatory alternative was chosen,  
134 and whether the proposed method of regulation is appropriate;

135 (9) A list of other states that regulate the profession or occupation, the type of  
136 regulation, copies of other states' laws, and available evidence from those states of the  
137 effect of regulation on the profession or occupation in terms of a before-and-after analysis;

138 (10) The details of any previous efforts in this state to implement regulation of the  
139 profession or occupation;

140 (11) Whether the profession or occupation plans to apply for mandated benefits;

141 (12) Whether the proposed requirements for regulation exceed the standards of  
142 minimal competence and what those standards are;

143 (13) The method proposed to finance the proposed regulation and financial data  
144 pertaining to whether the proposed regulation can be reasonably financed by current or  
145 proposed licensees through dedicated revenue mechanisms; and

146 (14) Whether the regulatory entity would be authorized and proactive in entering  
147 into reciprocity agreements with other jurisdictions.

148 4. Applicant groups shall submit a written report explaining the factors  
149 enumerated in subsection 3 of this section to the legislative committees of reference.

150 5. There is hereby established a "Division of Professional Registration" assigned to the  
151 department of insurance, financial institutions and professional registration as a type III transfer,  
152 headed by a director appointed by the governor with the advice and consent of the senate. All  
153 of the general provisions, definitions and powers enumerated in section 1 of the Omnibus State  
154 Reorganization Act of 1974 and Executive Order 06-04 shall apply to this department and its  
155 divisions, agencies, and personnel.

156 [3-] 6. The director of the division of professional registration shall promulgate rules and  
157 regulations which designate for each board or commission assigned to the division the renewal  
158 date for licenses or certificates. After the initial establishment of renewal dates, no director of  
159 the division shall promulgate a rule or regulation which would change the renewal date for

160 licenses or certificates if such change in renewal date would occur prior to the date on which the  
161 renewal date in effect at the time such new renewal date is specified next occurs. Each board or  
162 commission shall by rule or regulation establish licensing periods of one, two, or three years.  
163 Registration fees set by a board or commission shall be effective for the entire licensing period  
164 involved, and shall not be increased during any current licensing period. Persons who are  
165 required to pay their first registration fees shall be allowed to pay the pro rata share of such fees  
166 for the remainder of the period remaining at the time the fees are paid. Each board or  
167 commission shall provide the necessary forms for initial registration, and thereafter the director  
168 may prescribe standard forms for renewal of licenses and certificates. Each board or commission  
169 shall by rule and regulation require each applicant to provide the information which is required  
170 to keep the board's records current. Each board or commission shall have the authority to collect  
171 and analyze information required to support workforce planning and policy development. Such  
172 information shall not be publicly disclosed so as to identify a specific health care provider, as  
173 defined in section 376.1350. Each board or commission shall issue the original license or  
174 certificate.

175 ~~[4-]~~ 7. The division shall provide clerical and other staff services relating to the issuance  
176 and renewal of licenses for all the professional licensing and regulating boards and commissions  
177 assigned to the division. The division shall perform the financial management and clerical  
178 functions as they each relate to issuance and renewal of licenses and certificates. "Issuance and  
179 renewal of licenses and certificates" means the ministerial function of preparing and delivering  
180 licenses or certificates, and obtaining material and information for the board or commission in  
181 connection with the renewal thereof. It does not include any discretionary authority with regard  
182 to the original review of an applicant's qualifications for licensure or certification, or the  
183 subsequent review of licensee's or certificate holder's qualifications, or any disciplinary action  
184 contemplated against the licensee or certificate holder. The division may develop and implement  
185 microfilming systems and automated or manual management information systems.

186 ~~[5-]~~ 8. The director of the division shall maintain a system of accounting and budgeting,  
187 in cooperation with the director of the department, the office of administration, and the state  
188 auditor's office, to ensure proper charges are made to the various boards for services rendered  
189 to them. The general assembly shall appropriate to the division and other state agencies from  
190 each board's funds moneys sufficient to reimburse the division and other state agencies for all  
191 services rendered and all facilities and supplies furnished to that board.

192 ~~[6-]~~ 9. For accounting purposes, the appropriation to the division and to the office of  
193 administration for the payment of rent for quarters provided for the division shall be made from  
194 the "Professional Registration Fees Fund", which is hereby created, and is to be used solely for  
195 the purpose defined in subsection ~~[5]~~ 8 of this section. The fund shall consist of moneys

196 deposited into it from each board's fund. Each board shall contribute a prorated amount  
197 necessary to fund the division for services rendered and rent based upon the system of accounting  
198 and budgeting established by the director of the division as provided in subsection ~~[5]~~ 8 of this  
199 section. Transfers of funds to the professional registration fees fund shall be made by each board  
200 on July first of each year; provided, however, that the director of the division may establish an  
201 alternative date or dates of transfers at the request of any board. Such transfers shall be made  
202 until they equal the prorated amount for services rendered and rent by the division. The  
203 provisions of section 33.080 to the contrary notwithstanding, money in this fund shall not be  
204 transferred and placed to the credit of general revenue.

205 ~~[7-]~~ 10. The director of the division shall be responsible for collecting and accounting  
206 for all moneys received by the division or its component agencies. Any money received by a  
207 board or commission shall be promptly given, identified by type and source, to the director. The  
208 director shall keep a record by board and state accounting system classification of the amount  
209 of revenue the director receives. The director shall promptly transmit all receipts to the  
210 department of revenue for deposit in the state treasury to the credit of the appropriate fund. The  
211 director shall provide each board with all relevant financial information in a timely fashion.  
212 Each board shall cooperate with the director by providing necessary information.

213 ~~[8-]~~ 11. All educational transcripts, test scores, complaints, investigatory reports, and  
214 information pertaining to any person who is an applicant or licensee of any agency assigned to  
215 the division of professional registration by statute or by the department are confidential and may  
216 not be disclosed to the public or any member of the public, except with the written consent of  
217 the person whose records are involved. The agency which possesses the records or information  
218 shall disclose the records or information if the person whose records or information is involved  
219 has consented to the disclosure. Each agency is entitled to the attorney-client privilege and  
220 work-product privilege to the same extent as any other person. Provided, however, that any  
221 board may disclose confidential information without the consent of the person involved in the  
222 course of voluntary interstate exchange of information, or in the course of any litigation  
223 concerning that person, or pursuant to a lawful request, or to other administrative or law  
224 enforcement agencies acting within the scope of their statutory authority. Information regarding  
225 identity, including names and addresses, registration, and currency of the license of the persons  
226 possessing licenses to engage in a professional occupation and the names and addresses of  
227 applicants for such licenses is not confidential information.

228 ~~[9-]~~ 12. Any deliberations conducted and votes taken in rendering a final decision after  
229 a hearing before an agency assigned to the division shall be closed to the parties and the public.  
230 Once a final decision is rendered, that decision shall be made available to the parties and the  
231 public.

232           ~~[10.]~~ **13.** A compelling governmental interest shall be deemed to exist for the purposes  
233 of section 536.025 for licensure fees to be reduced by emergency rule, if the projected fund  
234 balance of any agency assigned to the division of professional registration is reasonably expected  
235 to exceed an amount that would require transfer from that fund to general revenue.

236           ~~[11.]~~ **14.** (1) The following boards and commissions are assigned by specific type  
237 transfers to the division of professional registration: Missouri state board of accountancy, chapter  
238 326; board of cosmetology and barber examiners, chapters 328 and 329; Missouri board for  
239 architects, professional engineers, professional land surveyors and landscape architects, chapter  
240 327; Missouri state board of chiropractic examiners, chapter 331; state board of registration for  
241 the healing arts, chapter 334; Missouri dental board, chapter 332; state board of embalmers and  
242 funeral directors, chapter 333; state board of optometry, chapter 336; Missouri state board of  
243 nursing, chapter 335; board of pharmacy, chapter 338; state board of podiatric medicine, chapter  
244 330; Missouri real estate appraisers commission, chapter 339; and Missouri veterinary medical  
245 board, chapter 340. The governor shall appoint members of these boards by and with the advice  
246 and consent of the senate.

247           (2) The boards and commissions assigned to the division shall exercise all their  
248 respective statutory duties and powers, except those clerical and other staff services involving  
249 collecting and accounting for moneys and financial management relating to the issuance and  
250 renewal of licenses, which services shall be provided by the division, within the appropriation  
251 therefor. Nothing herein shall prohibit employment of professional examining or testing services  
252 from professional associations or others as required by the boards or commissions on contract.  
253 Nothing herein shall be construed to affect the power of a board or commission to expend its  
254 funds as appropriated. However, the division shall review the expense vouchers of each board.  
255 The results of such review shall be submitted to the board reviewed and to the house and senate  
256 appropriations committees annually.

257           (3) Notwithstanding any other provisions of law, the director of the division shall  
258 exercise only those management functions of the boards and commissions specifically provided  
259 in the Reorganization Act of 1974, and those relating to the allocation and assignment of space,  
260 personnel other than board personnel, and equipment.

261           (4) "Board personnel", as used in this section or chapters 317, 326, 327, 328, 329, 330,  
262 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall mean personnel whose functions  
263 and responsibilities are in areas not related to the clerical duties involving the issuance and  
264 renewal of licenses, to the collecting and accounting for moneys, or to financial management  
265 relating to issuance and renewal of licenses; specifically included are executive secretaries (or  
266 comparable positions), consultants, inspectors, investigators, counsel, and secretarial support  
267 staff for these positions; and such other positions as are established and authorized by statute for



268 a particular board or commission. Boards and commissions may employ legal counsel, if  
269 authorized by law, and temporary personnel if the board is unable to meet its responsibilities with  
270 the employees authorized above. Any board or commission which hires temporary employees  
271 shall annually provide the division director and the appropriation committees of the general  
272 assembly with a complete list of all persons employed in the previous year, the length of their  
273 employment, the amount of their remuneration, and a description of their responsibilities.

274 (5) Board personnel for each board or commission shall be employed by and serve at the  
275 pleasure of the board or commission, shall be supervised as the board or commission designates,  
276 and shall have their duties and compensation prescribed by the board or commission, within  
277 appropriations for that purpose, except that compensation for board personnel shall not exceed  
278 that established for comparable positions as determined by the board or commission pursuant  
279 to the job and pay plan of the department of insurance, financial institutions and professional  
280 registration. Nothing herein shall be construed to permit salaries for any board personnel to be  
281 lowered except by board action.

282 ~~[12.]~~ 15. All the powers, duties, and functions of the division of athletics, chapter 317,  
283 and others, are assigned by type I transfer to the division of professional registration.

284 ~~[13.]~~ 16. Wherever the laws, rules, or regulations of this state make reference to the  
285 division of professional registration of the department of economic development, such references  
286 shall be deemed to refer to the division of professional registration.

287 ~~[14.]~~ 17. (1) The state board of nursing, board of pharmacy, Missouri dental board, state  
288 committee of psychologists, state board of chiropractic examiners, state board of optometry,  
289 Missouri board of occupational therapy, or state board of registration for the healing arts may  
290 individually or collectively enter into a contractual agreement with the department of health and  
291 senior services, a public institution of higher education, or a nonprofit entity for the purpose of  
292 collecting and analyzing workforce data from its licensees, registrants, or permit holders for  
293 future workforce planning and to assess the accessibility and availability of qualified health care  
294 services and practitioners in Missouri. The boards shall work collaboratively with other state  
295 governmental entities to ensure coordination and avoid duplication of efforts.

296 (2) The boards may expend appropriated funds necessary for operational expenses of the  
297 program formed under this subsection. Each board is authorized to accept grants to fund the  
298 collection or analysis authorized in this subsection. Any such funds shall be deposited in the  
299 respective board's fund.

300 (3) Data collection shall be controlled and approved by the applicable state board  
301 conducting or requesting the collection. Notwithstanding the provisions of sections 324.010 and  
302 334.001, the boards may release identifying data to the contractor to facilitate data analysis of  
303 the health care workforce including, but not limited to, geographic, demographic, and practice

304 or professional characteristics of licensees. The state board shall not request or be authorized  
305 to collect income or other financial earnings data.

306 (4) Data collected under this subsection shall be deemed the property of the state board  
307 requesting the data. Data shall be maintained by the state board in accordance with chapter 610,  
308 provided that any information deemed closed or confidential under subsection [8] 11 of this  
309 section or any other provision of state law shall not be disclosed without consent of the  
310 applicable licensee or entity or as otherwise authorized by law. Data shall only be released in  
311 an aggregate form by geography, profession or professional specialization, or population  
312 characteristic in a manner that cannot be used to identify a specific individual or entity. Data  
313 suppression standards shall be addressed and established in the contractual agreement.

314 (5) Contractors shall maintain the security and confidentiality of data received or  
315 collected under this subsection and shall not use, disclose, or release any data without approval  
316 of the applicable state board. The contractual agreement between the applicable state board and  
317 contractor shall establish a data release and research review policy to include legal and  
318 institutional review board, or agency-equivalent, approval.

319 (6) Each board may promulgate rules subject to the provisions of this subsection and  
320 chapter 536 to effectuate and implement the workforce data collection and analysis authorized  
321 by this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that  
322 is created under the authority delegated in this section shall become effective only if it complies  
323 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
324 This section and chapter 536 are nonseverable and if any of the powers vested with the general  
325 assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a  
326 rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
327 proposed or adopted after August 28, 2016, shall be invalid and void.

✓