

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 634

98TH GENERAL ASSEMBLY

1568H.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 324.001 and 621.280, RSMo, and to enact in lieu thereof two new sections relating to the division of professional registration.

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

Section A. Sections 324.001 and 621.280, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 324.001 and 621.280 to read as follows: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, 2016.**

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

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

(a) Unregulated practice has caused significant harm and endangered the general welfare and the potential for further harm and endangerment is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial personal qualifications; and

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.

18 (c) The general welfare cannot be effectively protected by other means.

19 (4) After evaluating the criteria in subdivision (3) of this subsection and considering
20 governmental, economic, and societal costs and benefits, if the legislature finds that the
21 state has an important interest in regulating an occupation or profession not previously
22 regulated by law, the least restrictive type of regulation shall be implemented, consistent
23 with the need to protect the general welfare and this section. If:

24 (a) Market competition, common law, statutory civil actions, and criminal
25 prohibitions are insufficient to eradicate actual harm, the regulation shall provide for
26 stricter civil actions and criminal prosecutions;

27 (b) A service is being performed for individuals involves a hazard to the general
28 welfare, the regulation shall impose inspection requirements and enable an appropriate
29 state agency to enforce violations by injunctive relief in court including, but not limited to,
30 regulation of the business activity providing the service rather than practitioners;

31 (c) The threat to the general welfare resulting from the practitioner's services is
32 relatively small, easily identifiable or predictable, the regulation shall implement a system
33 of insurance, bonding, or registration;

34 (d) The consumer possesses significantly less information so that the practitioner
35 puts the consumer in a disadvantageous position relative to the practitioner to judge the
36 quality of the practitioner's services, the regulation shall implement a voluntary system of
37 certification; or

38 (e) There is no other type of regulation that will protect the general welfare other
39 than licensing, the regulation shall implement a system of licensing.

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

41 (1) "Applicant group", any occupational or professional group or organization, any
42 individual, or any other interested party that proposes that any occupation or profession
43 not presently regulated be regulated;

44 (2) "Certification", a voluntary program in which the government grants
45 nontransferable recognition to an individual who meets personal qualifications established
46 by a legislative body. Upon approval, the individual may use "certified" as a designated
47 title. Someone who has not been recognized as certified may perform the occupation for
48 compensation lawfully, but shall not use the title "certified". This term shall not be
49 synonymous with an occupational license or prohibit the use of private certification;

50 (3) "Department", the department of insurance, financial institutions and professional
51 registration;

52 [(2)] (4) "Director", the director of the division of professional registration; and

53 [(3)] (5) "Division", the division of professional registration;

54 (6) "General welfare", the concern of the government for the health, peace,
55 morality, and safety of its citizens;

56 (7) "Grandfather clause", a provision in a regulatory statute applicable to
57 practitioners actively engaged in the regulated occupation or profession prior to the
58 effective date of the regulatory statute which exempts the practitioners from meeting the
59 personal qualifications set forth in the regulatory statute to perform prescribed
60 occupational tasks;

61 (8) "Inspection" the periodic examination of practitioners by a state agency in
62 order to ascertain whether the practitioners' activities are being carried out in a fashion
63 consistent with the requisite level of cleanliness necessary to protect the general welfare;

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

67 (10) "Least restrictive type of occupational regulations", in order from least to most
68 restrictive:

69 (a) Market competition;

70 (b) A provision for private civil action to remedy consumer harm;

71 (c) Criminal sanction;

72 (d) Regulation of the business activity providing the service rather than the
73 practitioner;

74 (e) Inspection;

75 (f) Bonding or insurance;

76 (g) Registration;

77 (h) Certification;

78 (i) Occupational license;

79 (11) "Legislative committees of reference", the standing legislative committees
80 designated by the respective rules committees of the senate and house of representatives
81 to consider proposed legislation to regulate occupations, or professions not previously
82 regulated;

83 (12) "Occupational license", a nontransferable authorization in law for an
84 individual to perform a lawful occupation for compensation based on meeting personal
85 qualifications established by a legislative body. It shall be prohibited for an individual who
86 does not possess an occupational license to perform the occupation for compensation;

87 (13) "Occupational regulation", a statute, ordinance, rule, practice, policy, or other
88 law requiring an individual to possess certain personal qualifications to work in a lawful
89 occupation;

90 (14) "Personal qualifications", criteria related to an individual's personal
91 background including completion of an approved educational program, satisfactory
92 performance on an examination, work experience, criminal history, moral standing, and
93 completion of continuing education;

94 (15) "Practitioner", an individual who has achieved knowledge and skill by
95 practice and is actively engaged in a specified occupation or profession;

96 (16) "Public member" an individual who is not currently, and has never been in
97 the past, a member or spouse of a member of the occupation or profession being regulated
98 or an individual who does not currently have and has never in the past had a material
99 financial interest in either the rendering of the occupation or professional service being
100 regulated or an activity directly related to the occupation or profession being regulated;

101 (17) "Registration", a requirement established by the legislature in which a person:

102 (a) Submits notification to a state agency; and

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

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105 Notification may include the person's name and address, the person's agent for service of
106 process, the location of the activity to be performed, and a description of the service the
107 person provides. Registration may include a requirement to post a bond but does not
108 include education or experience requirements. Nonregistered persons may not perform
109 the occupation for compensation or use "registered" as a designated title. The term
110 registration shall not be synonymous with an occupational license and does not refer to or
111 prohibit the use of private registration;

112 (18) "Regulatory entity", any board, commission, agency, division, or other unit
113 or subunit of state government which regulates one or more professions, occupations,
114 industries, businesses, or other endeavors in this state;

115 (19) "State agency", every state office, department, board, commission, regulatory
116 entity, and agency of the state, and, if provided by law, programs and activities involving
117 less than the full responsibility of a state agency;

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

121 [2.] 3. After January 1, 2016, applicant groups shall explain each of the following
122 factors to the extent requested by the legislative committees of reference:

123 (1) A definition of the problem and why regulation is necessary including, but not
124 limited to:

- 125 (a) The description and quantification of the actual harm to the general public due
126 to the fact that the occupation or profession is not regulated;
- 127 (b) The extent to which the actual harm could be avoided;
- 128 (c) A description of how consumers will benefit in the future from the proposed
129 type of regulation; and
- 130 (d) The extent of autonomy a practitioner has, as indicated by:
- 131 a. The extent to which the occupation or profession calls for independent judgment
132 and the extent of skill or experience required in making the independent judgment; and
- 133 b. The extent to which practitioners are supervised;
- 134 (2) The efforts made to address the actual harm caused:
- 135 (a) Voluntary efforts, if any, by members of the occupation or profession to:
- 136 a. Establish a code of ethics; or
- 137 b. Help resolve disputes between practitioners and consumers; and
- 138 (b) Recourse to and the extent of use of applicable law and whether it could be
139 strengthened to control the problem;
- 140 (3) The alternatives considered including, but not limited to:
- 141 (a) Increased civil or criminal sanctions;
- 142 (b) Regulation of businesses rather than practitioners;
- 143 (c) Regulation of the service or training program rather than the individual
144 practitioners;
- 145 (d) Inspections;
- 146 (e) Bonding or insurance;
- 147 (f) Registration of all practitioners;
- 148 (g) Certification of all practitioners;
- 149 (h) Other alternatives;
- 150 (i) Why the use of the alternatives specified in this subsection would not be
151 adequate to protect the general welfare; and
- 152 (j) Why licensing would serve to protect the general welfare;
- 153 (4) The benefit to the public if regulation is granted;
- 154 (5) The extent to which the incidences of specific problems present in the
155 unregulated occupation or profession can reasonably be expected to be reduced by
156 proposed regulation;
- 157 (6) Whether the public can identify qualified practitioners;
- 158 (7) The extent to which the public can be confident that qualified practitioners are
159 competent;

160 (a) Whether the proposed regulatory entity would be a board composed of
161 members of the profession and public members, a state agency, or both, and, if
162 appropriate, their respective responsibilities in administering the system of inspections,
163 bonding, insurance, registration, certification, or licensure, including the composition of
164 the board and the number of public members, if any; the powers and duties of the board
165 or state agency regarding examinations and for cause revocation, suspension, and
166 nonrenewal of registrations, certificates, or licenses; the promulgation of rules and canons
167 of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken
168 against practitioners; and how fees would be levied and collected to cover the expenses of
169 administering and operating the regulatory system;

170 (b) If there is a grandfather clause, how consumers will be protected from the harm
171 caused by current practitioners that is the basis for advocating for the enactment of the
172 proposed regulation;

173 (c) If there is a grandfather clause, if current practitioners will be required to meet
174 the prerequisite qualifications established by the regulatory entity at a later date and if not,
175 why not;

176 (d) Whether the regulatory entity would be authorized to enter into reciprocity
177 agreements with other jurisdictions;

178 (e) The nature and duration of any training including, but not limited to, whether
179 the training includes a substantial amount of supervised field experience; whether training
180 programs exist in this state; if there will be an experience requirement; whether the
181 experience shall be acquired under a registered, certified, or licensed practitioner; whether
182 there are alternative routes of entry or methods of meeting the prerequisite qualifications;
183 whether all applicants will be required to pass an examination; and, if an examination is
184 required, by whom it will be developed and how the costs of development will be met; and

185 (f) What additional training programs are anticipated to be necessary to assure
186 training is accessible statewide; the anticipated time required to establish the additional
187 training programs; the types of institutions capable of providing the training; a description
188 of how training programs will meet the needs of the expected workforce, including reentry
189 workers, minorities, placebound students, and others;

190 (8) Assurance of the public that practitioners have maintained their competence:

191 (a) Whether the registration, certification, or licensure will carry an expiration
192 date; and

193 (b) Whether renewal will be based only upon payment of a fee, or whether renewal
194 will involve reexamination, peer review, or other enforcement;

195 (9) The extent to which regulation might harm the public;

196 **(10) The extent to which regulation will restrict entry into the occupation or**
197 **profession:**

198 **(a) Whether the proposed personal qualifications are more restrictive than**
199 **necessary to insure safe and effective performance;**

200 **(b) How the proposed personal qualifications compare to other regulations in the**
201 **state which may involve greater risks to the general welfare; and**

202 **(c) The number of other states that regulate the same occupation or profession and**
203 **how the proposed personal qualifications compare to required personal qualifications in**
204 **other states that regulate the same occupation or profession;**

205 **(11) Whether there are similar professions to that of the applicant group which**
206 **shall be included in or portions of the applicant group which shall be excluded from the**
207 **proposed legislation;**

208 **(12) The maintenance of personal qualifications;**

209 **(13) Whether effective quality assurance standards exist in the occupation or**
210 **profession, such as legal requirements associated with specific programs that define or**
211 **enforce professional standards, or a code of ethics;**

212 **(14) How the proposed legislation will assure:**

213 **(a) The extent to which a code of ethics, if any, will be adopted; and**

214 **(b) Grounds for suspension or revocation of registration, certification, or licensure;**

215 **(15) A description of the group proposed for regulation, including a list of**
216 **associations, organizations, and other groups representing the practitioners in this state,**
217 **an estimate of the number of practitioners in each group, and whether the groups**
218 **represent different levels of practice; and**

219 **(16) The expected costs of regulation including, but not limited to:**

220 **(a) The impact registration, certification, or licensure will have on the costs of the**
221 **services to the public;**

222 **(b) The cost to the state and to the general public of implementing the proposed**
223 **legislation; and**

224 **(c) The cost to the state and the members of the group proposed for regulation for**
225 **the required education, including projected tuition and expenses and expected increases**
226 **in training programs, staffing, and enrollments at state training institutions.**

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

229 **5. A legislative proposal which contains a continuing education requirement shall**
230 **be accompanied by a detailed explanation of how such requirement could be effective for**
231 **the profession addressed in the legislation.**

232 **6. Nothing in this section shall be construed to create a right of action against a**
233 **private party or to require a private party to do business with an individual who is not**
234 **licensed, certified or registered with the government or to create a right of action against**
235 **the state, county, municipal, or other level of government in the state.**

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

242 [3.] 8. The director of the division of professional registration shall promulgate rules and
243 regulations which designate for each board or commission assigned to the division the renewal
244 date for licenses or certificates. After the initial establishment of renewal dates, no director of
245 the division shall promulgate a rule or regulation which would change the renewal date for
246 licenses or certificates if such change in renewal date would occur prior to the date on which the
247 renewal date in effect at the time such new renewal date is specified next occurs. Each board or
248 commission shall by rule or regulation establish licensing periods of one, two, or three years.
249 Registration fees set by a board or commission shall be effective for the entire licensing period
250 involved, and shall not be increased during any current licensing period. Persons who are
251 required to pay their first registration fees shall be allowed to pay the pro rata share of such fees
252 for the remainder of the period remaining at the time the fees are paid. Each board or
253 commission shall provide the necessary forms for initial registration, and thereafter the director
254 may prescribe standard forms for renewal of licenses and certificates. Each board or commission
255 shall by rule and regulation require each applicant to provide the information which is required
256 to keep the board's records current. Each board or commission shall have the authority to collect
257 and analyze information required to support workforce planning and policy development. Such
258 information shall not be publicly disclosed so as to identify a specific health care provider, as
259 defined in section 376.1350. Each board or commission shall issue the original license or
260 certificate.

261 [4.] 9. The division shall provide clerical and other staff services relating to the issuance
262 and renewal of licenses for all the professional licensing and regulating boards and commissions
263 assigned to the division. The division shall perform the financial management and clerical
264 functions as they each relate to issuance and renewal of licenses and certificates. "Issuance and
265 renewal of licenses and certificates" means the ministerial function of preparing and delivering
266 licenses or certificates, and obtaining material and information for the board or commission in
267 connection with the renewal thereof. It does not include any discretionary authority with regard

268 to the original review of an applicant's qualifications for licensure or certification, or the
269 subsequent review of licensee's or certificate holder's qualifications, or any disciplinary action
270 contemplated against the licensee or certificate holder. The division may develop and implement
271 microfilming systems and automated or manual management information systems.

272 [5.] 10. The director of the division shall maintain a system of accounting and budgeting,
273 in cooperation with the director of the department, the office of administration, and the state
274 auditor's office, to ensure proper charges are made to the various boards for services rendered
275 to them. The general assembly shall appropriate to the division and other state agencies from
276 each board's funds moneys sufficient to reimburse the division and other state agencies for all
277 services rendered and all facilities and supplies furnished to that board.

278 [6.] 11. For accounting purposes, the appropriation to the division and to the office of
279 administration for the payment of rent for quarters provided for the division shall be made from
280 the "Professional Registration Fees Fund", which is hereby created, and is to be used solely for
281 the purpose defined in subsection [5] 10 of this section. The fund shall consist of moneys
282 deposited into it from each board's fund. Each board shall contribute a prorated amount
283 necessary to fund the division for services rendered and rent based upon the system of accounting
284 and budgeting established by the director of the division as provided in subsection [5] 10 of this
285 section. Transfers of funds to the professional registration fees fund shall be made by each board
286 on July first of each year; provided, however, that the director of the division may establish an
287 alternative date or dates of transfers at the request of any board. Such transfers shall be made
288 until they equal the prorated amount for services rendered and rent by the division. The
289 provisions of section 33.080 to the contrary notwithstanding, money in this fund shall not be
290 transferred and placed to the credit of general revenue.

291 [7.] 12. The director of the division shall be responsible for collecting and accounting
292 for all moneys received by the division or its component agencies. Any money received by a
293 board or commission shall be promptly given, identified by type and source, to the director. The
294 director shall keep a record by board and state accounting system classification of the amount
295 of revenue the director receives. The director shall promptly transmit all receipts to the
296 department of revenue for deposit in the state treasury to the credit of the appropriate fund. The
297 director shall provide each board with all relevant financial information in a timely fashion.
298 Each board shall cooperate with the director by providing necessary information.

299 [8.] 13. All educational transcripts, test scores, complaints, investigatory reports, and
300 information pertaining to any person who is an applicant or licensee of any agency assigned to
301 the division of professional registration by statute or by the department are confidential and may
302 not be disclosed to the public or any member of the public, except with the written consent of
303 the person whose records are involved. The agency which possesses the records or information

304 shall disclose the records or information if the person whose records or information is involved
305 has consented to the disclosure. Each agency is entitled to the attorney-client privilege and
306 work-product privilege to the same extent as any other person. Provided, however, that any
307 board may disclose confidential information without the consent of the person involved in the
308 course of voluntary interstate exchange of information, or in the course of any litigation
309 concerning that person, or pursuant to a lawful request, or to other administrative or law
310 enforcement agencies acting within the scope of their statutory authority. Information regarding
311 identity, including names and addresses, registration, and currency of the license of the persons
312 possessing licenses to engage in a professional occupation and the names and addresses of
313 applicants for such licenses is not confidential information.

314 [9.] 14. Any deliberations conducted and votes taken in rendering a final decision after
315 a hearing before an agency assigned to the division shall be closed to the parties and the public.
316 Once a final decision is rendered, that decision shall be made available to the parties and the
317 public.

318 [10.] 15. A compelling governmental interest shall be deemed to exist for the purposes
319 of section 536.025 for licensure fees to be reduced by emergency rule, if the projected fund
320 balance of any agency assigned to the division of professional registration is reasonably expected
321 to exceed an amount that would require transfer from that fund to general revenue.

322 [11.] 16. (1) The following boards and commissions are assigned by specific type
323 transfers to the division of professional registration: Missouri state board of accountancy,
324 chapter 326; board of cosmetology and barber examiners, chapters 328 and 329; Missouri board
325 for architects, professional engineers, professional land surveyors and landscape architects,
326 chapter 327; Missouri state board of chiropractic examiners, chapter 331; state board of
327 registration for the healing arts, chapter 334; Missouri dental board, chapter 332; state board of
328 embalmers and funeral directors, chapter 333; state board of optometry, chapter 336; Missouri
329 state board of nursing, chapter 335; board of pharmacy, chapter 338; state board of podiatric
330 medicine, chapter 330; Missouri real estate appraisers commission, chapter 339; and Missouri
331 veterinary medical board, chapter 340. The governor shall appoint members of these boards by
332 and with the advice and consent of the senate.

333 (2) The boards and commissions assigned to the division shall exercise all their
334 respective statutory duties and powers, except those clerical and other staff services involving
335 collecting and accounting for moneys and financial management relating to the issuance and
336 renewal of licenses, which services shall be provided by the division, within the appropriation
337 therefor. Nothing herein shall prohibit employment of professional examining or testing services
338 from professional associations or others as required by the boards or commissions on contract.
339 Nothing herein shall be construed to affect the power of a board or commission to expend its

340 funds as appropriated. However, the division shall review the expense vouchers of each board.
341 The results of such review shall be submitted to the board reviewed and to the house and senate
342 appropriations committees annually.

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

347 (4) "Board personnel", as used in this section or chapters 317, 326, 327, 328, 329, 330,
348 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall mean personnel whose functions
349 and responsibilities are in areas not related to the clerical duties involving the issuance and
350 renewal of licenses, to the collecting and accounting for moneys, or to financial management
351 relating to issuance and renewal of licenses; specifically included are executive secretaries (or
352 comparable positions), consultants, inspectors, investigators, counsel, and secretarial support
353 staff for these positions; and such other positions as are established and authorized by statute for
354 a particular board or commission. Boards and commissions may employ legal counsel, if
355 authorized by law, and temporary personnel if the board is unable to meet its responsibilities with
356 the employees authorized above. Any board or commission which hires temporary employees
357 shall annually provide the division director and the appropriation committees of the general
358 assembly with a complete list of all persons employed in the previous year, the length of their
359 employment, the amount of their remuneration, and a description of their responsibilities.

360 (5) Board personnel for each board or commission shall be employed by and serve at the
361 pleasure of the board or commission, shall be supervised as the board or commission designates,
362 and shall have their duties and compensation prescribed by the board or commission, within
363 appropriations for that purpose, except that compensation for board personnel shall not exceed
364 that established for comparable positions as determined by the board or commission pursuant
365 to the job and pay plan of the department of insurance, financial institutions and professional
366 registration. Nothing herein shall be construed to permit salaries for any board personnel to be
367 lowered except by board action.

368 [12.] 17. All the powers, duties, and functions of the division of athletics, chapter 317,
369 and others, are assigned by type I transfer to the division of professional registration.

370 [13.] 18. Wherever the laws, rules, or regulations of this state make reference to the
371 "division of professional registration of the department of economic development", such
372 references shall be deemed to refer to the division of professional registration.

**621.280 1. For any new board or commission created after July 1, 2015, and
2 charged with regulating or licensing an occupation or profession, those practitioners
3 actively engaged in the newly regulated occupation or profession for at least one year prior
4 to the effective date of the regulatory statute shall have a property right in their continued**

5 **legal ability to engage in their occupation or profession.**

6 **2. Any decision of a newly-created board or commission to refuse licensure to a pre-**
7 **existing practitioner shall be in writing, shall inform the pre-existing practitioner of the**
8 **specific reasons for the denial, and shall inform the pre-existing practitioner of their right**
9 **to appeal before a neutral decision-maker at the administrative hearing commission. Any**
10 **pre-existing practitioner denied licensure shall have the right to file an appeal to the**
11 **administrative hearing commission on their license denial within thirty days after the**
12 **decision of the newly-created board or commission. If the pre-existing practitioner does not**
13 **timely appeal, their right to continue practicing the occupation or profession shall**
14 **extinguish immediately. In the event of a timely appeal, the pre-existing practitioner's right**
15 **to practice their occupation or profession shall continue until a final decision of the**
16 **administrative hearing commission. The burden of proof in any hearing under this section**
17 **shall be on the new board or commission to show that the pre-existing practitioner does not**
18 **meet the requirements of the new regulatory regime.**

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