

FIRST REGULAR SESSION

SENATE BILL NO. 429

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time February 15, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1418S.02I

AN ACT

To amend chapters 324 and 621, RSMo, by adding thereto two new sections relating to the regulation of previously unregulated professions.

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

Section A. Chapters 324 and 621, RSMo, is amended by adding thereto
2 two new sections, to be known as sections 324.004 and 621.280, to read as follows:

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

3 **(1) "Applicant group", any occupational or professional group or
4 organization, any individual, or any other interested party that
5 proposes that any occupation or profession not presently regulated be
6 regulated;**

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

15 **(3) "General welfare", the concern of the government for the
16 health, peace, morality, and safety of its citizens;**

17 **(4) "Grandfather clause", a provision in a regulatory statute
18 applicable to practitioners actively engaged in the regulated
19 occupation or profession prior to the effective date of the regulatory
20 statute which exempts the practitioners from meeting the personal
21 qualifications set forth in the regulatory statute to perform prescribed**

22 **occupational tasks;**

23 **(5) "Inspection", the periodic examination of practitioners by a**
24 **state agency in order to ascertain whether the practitioners' activities**
25 **are being carried out in a fashion consistent with the requisite level of**
26 **cleanliness necessary to protect the general welfare;**

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

31 **(7) "Least restrictive type of occupational regulations", in order**
32 **from least to most restrictive:**

33 **(a) Market competition;**

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

35 **(c) Criminal sanction;**

36 **(d) Regulation of the business activity providing the service**
37 **rather than the practitioner;**

38 **(e) Inspection;**

39 **(f) Bonding or insurance;**

40 **(g) Registration;**

41 **(h) Certification;**

42 **(i) Occupational license;**

43 **(8) "Legislative committees of reference", the standing legislative**
44 **committees designated by the respective rules committees of the senate**
45 **and house of representatives to consider proposed legislation to**
46 **regulate occupations or professions not previously regulated;**

47 **(9) "Occupational license", a nontransferable authorization in law**
48 **for an individual to perform a lawful occupation for compensation**
49 **based on meeting personal qualifications established by a legislative**
50 **body. It shall be prohibited for an individual who does not possess an**
51 **occupational license to perform the occupation for compensation;**

52 **(10) "Occupational regulation", a statute, ordinance, rule,**
53 **practice, policy, or other law requiring an individual to possess certain**
54 **personal qualifications to work in a lawful occupation;**

55 **(11) "Personal qualifications", criteria related to an individual's**
56 **personal background including completion of an approved educational**
57 **program, satisfactory performance on an examination, work**
58 **experience, criminal history, moral standing, and completion of**

59 continuing education;

60 (12) "Practitioner", an individual who has achieved knowledge
61 and skill by practice and is actively engaged in a specified occupation
62 or profession;

63 (13) "Public member", an individual who is not currently, and has
64 never been in the past, a member or spouse of a member of the
65 occupation or profession being regulated or an individual who does not
66 currently have and has never in the past had a material financial
67 interest in either the rendering of the occupation or professional
68 service being regulated or an activity directly related to the occupation
69 or profession being regulated;

70 (14) "Registration", a requirement established by the legislature
71 in which a person submits notification to a state agency, and may use
72 "registered" as a designated title. Notification may include the person's
73 name and address, the person's agent for service of process, the
74 location of the activity to be performed, and a description of the service
75 the person provides. Registration may include a requirement to post
76 a bond but does not include education or experience
77 requirements. Nonregistered persons may not perform the occupation
78 for compensation or use "registered" as a designated title. The term
79 registration shall not be synonymous with an occupational license and
80 does not refer to or prohibit the use of private registration;

81 (15) "Regulatory entity", any board, commission, agency, division,
82 or other unit or subunit of state government which regulates one or
83 more professions, occupations, industries, businesses, or other
84 endeavors in this state;

85 (16) "State agency", every state office, department, board,
86 commission, regulatory entity, and agency of the state, and, if provided
87 by law, programs and activities involving less than the full
88 responsibility of a state agency;

89 (17) "Substantial burden", a requirement in an occupational
90 regulation that imposes significant difficulty or cost on an individual
91 seeking to enter into or continue in a lawful occupation and is more
92 than an incidental burden.

93 2. All individuals shall engage in the occupation of their choice,
94 free from unreasonable government regulation. The state shall not
95 impose a substantial burden on an individual's pursuit of his or her

96 occupation or profession unless there is an important governmental
97 interest for the state to protect the general welfare. If such an interest
98 exists, the laws adopted by the state which impose a substantial burden
99 on an individual's pursuit of an occupation or profession shall be
100 substantially related to the public interest to be protected.

101 3. The general assembly shall not pass any laws regulating an
102 occupation or profession for the first time except by bill, as defined in
103 section 21.600, which has been referred to the legislative committees of
104 reference in both houses, reviewed in accordance with this section by
105 each committee, and voted upon in favor by a majority of committee
106 members as required by rule of the respective house. Any amendment
107 containing language to regulate an occupation or profession for the
108 first time shall not be adopted onto a bill in either house, unless such
109 language is identical to a bill which has been heard and voted on in
110 favor by a legislative committee of reference in the house where the
111 amendment is being proposed.

112 4. All bills introduced in the legislature to regulate an
113 occupation or profession for the first time shall be reviewed according
114 to the following criteria by the legislative committees of reference. An
115 occupation or profession shall be regulated by the state only if:

116 (1) The unregulated practice has caused significant harm and
117 endangered the general welfare and the potential for further harm and
118 endangerment is easily recognizable and not remote or dependent upon
119 tenuous argument;

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

122 (3) The general welfare cannot be effectively protected by other
123 means.

124 5. After evaluating the criteria in subsection 3 of this section and
125 considering governmental, economic, and societal costs and benefits, if
126 the legislative committee of reference finds that the state has an
127 important interest in regulating an occupation or profession not
128 previously regulated by law, only the least restrictive type of regulation
129 shall be approved by the committee, consistent with the need to protect
130 the general welfare and this section. If:

131 (1) Market competition, common law, statutory civil actions, and
132 criminal prohibitions are insufficient to eradicate actual harm, the

133 regulation shall provide for stricter civil actions and criminal
134 prosecutions;

135 (2) A service is being performed for individuals involves a
136 hazard to the general welfare, the regulation shall impose inspection
137 requirements and enable an appropriate state agency to enforce
138 violations by injunctive relief in court including, but not limited to,
139 regulation of the business activity providing the service rather than
140 practitioners;

141 (3) The threat to the general welfare resulting from the
142 practitioner's services is relatively small, easily identifiable or
143 predictable, the regulation shall implement a system of insurance,
144 bonding, or registration;

145 (4) The consumer possesses significantly less information so that
146 the practitioner puts the consumer in a disadvantageous position
147 relative to the practitioner to judge the quality of the practitioner's
148 services, the regulation shall implement a voluntary system of
149 certification; or

150 (5) There is no other type of regulation that will protect the
151 general welfare other than licensing, the regulation shall implement a
152 system of licensing.

153 6. After January 1, 2018, all applicant groups shall submit a
154 written report explaining each of the following factors to the legislative
155 committees of reference prior to the bill containing the proposed
156 regulation being heard before the committee in each house:

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

159 (a) The description and quantification of the actual harm to the
160 general public due to the fact that the occupation or profession is not
161 regulated;

162 (b) The extent to which the actual harm could be avoided;

163 (c) A description of how consumers will benefit in the future
164 from the proposed type of regulation; and

165 (d) The extent of autonomy a practitioner has, as indicated by:

166 a. The extent to which the occupation or profession calls for
167 independent judgment and the extent of skill or experience required in
168 making the independent judgment; and

169 b. The extent to which practitioners are supervised;

- 170 **(2) The efforts made to address the actual harm caused:**
171 **(a) Voluntary efforts, if any, by members of the occupation or**
172 **profession to:**
173 **a. Establish a code of ethics; or**
174 **b. Help resolve disputes between practitioners and consumers;**
175 **and**
176 **(b) Recourse to and the extent of use of applicable law and**
177 **whether it could be strengthened to control the problem;**
178 **(3) The alternatives considered including, but not limited to:**
179 **(a) Increased civil or criminal sanctions;**
180 **(b) Regulation of businesses rather than practitioners;**
181 **(c) Regulation of the service or training program rather than the**
182 **individual practitioners;**
183 **(d) Inspections;**
184 **(e) Bonding or insurance;**
185 **(f) Registration of all practitioners;**
186 **(g) Certification of all practitioners;**
187 **(h) Other alternatives;**
188 **(i) Why the use of the alternatives specified in this subsection**
189 **would not be adequate to protect the general welfare; and**
190 **(j) Why licensing would serve to protect the general welfare;**
191 **(4) The benefit to the public if regulation is granted;**
192 **(5) The extent to which the incidences of specific problems**
193 **present in the unregulated occupation or profession can reasonably be**
194 **expected to be reduced by proposed regulation;**
195 **(6) Whether the public can identify qualified practitioners;**
196 **(7) The extent to which the public can be confident that qualified**
197 **practitioners are competent:**
198 **(a) Whether the proposed regulatory entity would be a board**
199 **composed of members of the profession and public members, a state**
200 **agency, or both, and, if appropriate, their respective responsibilities in**
201 **administering the system of inspections, bonding, insurance,**
202 **registration, certification, or licensure, including the composition of**
203 **the board and the number of public members, if any; the powers and**
204 **duties of the board or state agency regarding examinations and for**
205 **cause revocation, suspension, and nonrenewal of registrations,**
206 **certificates, or licenses; the promulgation of rules and canons of ethics;**

207 the conduct of inspections; the receipt of complaints and disciplinary
208 action taken against practitioners; and how fees would be levied and
209 collected to cover the expenses of administering and operating the
210 regulatory system;

211 (b) If there is a grandfather clause, how consumers will be
212 protected from the harm caused by current practitioners that is the
213 basis for advocating for the enactment of the proposed legislation;

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

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

219 (e) The nature and duration of any training including, but not
220 limited to, whether the training includes a substantial amount of
221 supervised field experience; whether training programs exist in this
222 state; if there will be an experience requirement; whether the
223 experience shall be acquired under a registered, certified, or licensed
224 practitioner; whether there are alternative routes of entry or methods
225 of meeting the prerequisite qualifications; whether all applicants will
226 be required to pass an examination; and, if an examination is required,
227 by whom it will be developed and how the costs of development will be
228 met; and

229 (f) What additional training programs are anticipated to be
230 necessary to assure training is accessible statewide; the anticipated
231 time required to establish the additional training programs; the types
232 of institutions capable of providing the training; a description of how
233 training programs will meet the needs of the expected workforce,
234 including reentry workers, minorities, placebound students, and others;

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

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

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

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

243 (10) The extent to which regulation will restrict entry into the

244 **occupation or profession:**

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

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

250 **(c) The number of other states that regulate the same occupation**
251 **or profession and how the proposed personal qualifications compare to**
252 **required personal qualifications in other states that regulate the same**
253 **occupation or profession;**

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

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

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

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

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

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

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

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

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

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

278 **(c) The cost to the state and the members of the group proposed**
279 **for regulation for the required education, including projected tuition**
280 **and expenses and expected increases in training programs, staffing,**

281 and enrollments at state training institutions; and

282 (17) If the legislative proposal contains a continuing education
283 requirement, a detailed explanation of how such requirement could be
284 effective for the profession addressed in the legislation.

285 7. Nothing in this section shall be construed to create a right of
286 action against a private party or to require a private party to do
287 business with an individual who is not licensed, certified or registered
288 with the government or to create a right of action against the state,
289 county, municipal, or other level of government in the state.

621.280. 1. For any new board or commission created after July
2 1, 2017, and charged with regulating or licensing an occupation or
3 profession, those practitioners actively engaged in the newly regulated
4 occupation or profession for at least one year prior to the effective date
5 of the regulatory statute shall have a property right in their continued
6 legal ability to engage in their occupation or profession.

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

✓