

SECOND REGULAR SESSION

SENATE BILL NO. 677

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EIGEL.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4210S.03I

AN ACT

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Section A. Section 324.001, RSMo, is repealed and one new section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

324.001. 1. **(1) The purpose of this section is to promote the
2 general welfare by establishing guidelines for the regulation of
3 occupations and professions not regulated prior to January 1, 2019, and
4 those occupations and professions regulated prior to January 1, 2019,
5 that seek to substantially increase their scope of practice.**

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

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

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

19 **(b) The public can reasonably be expected to benefit from an**

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

20 assurance of personal qualifications; and

21 (c) The general welfare cannot be sufficiently protected by other
22 means.

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

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

33 (b) The consumer has challenges accessing credentialing
34 information or possesses significantly less information on how to report
35 abuses such that the practitioner puts the consumer in a
36 disadvantageous position relative to the practitioner to judge the
37 quality of the practitioner's services, the regulation shall implement a
38 system of certification; or

39 (c) Other regulatory structures, such as bonding, insurance,
40 registration, and certification insufficiently protect the general welfare
41 from recognizable harm, the regulation shall implement a system of
42 licensing.

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

44 (1) "Applicant group", any occupational or professional group or
45 organization, any individual, or any other interested party that
46 proposes that any occupation or profession not presently regulated be
47 regulated or proposes to substantially increase the scope of practice of
48 the occupation or profession;

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

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

56 [(2)] (4) "Director", the director of the division of professional

57 registration; [and]

58 [(3)] (5) "Division", the division of professional registration;

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

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

65 (8) "Least restrictive type of occupational regulations", in order
66 from least to most restrictive:

67 (a) Bonding or insurance;

68 (b) Registration;

69 (c) Certification;

70 (d) Occupational license;

71 (9) "Occupational license", a nontransferable authorization in law
72 for an individual to perform a lawful occupation for compensation
73 based on meeting personal qualifications established by a legislative
74 body. It shall be prohibited for an individual who does not possess an
75 occupational license to perform the occupation for compensation;

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

79 (11) "Personal qualifications", criteria related to an individual's
80 personal background, including completion of an approved educational
81 program, satisfactory performance on an examination, work
82 experience, criminal history, and completion of continuing education;

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

86 (13) "Public member", an individual who is not currently, and has
87 never been in the past, a member or spouse of a member of the
88 occupation or profession being regulated or an individual who does not
89 currently have and has never in the past had a material financial
90 interest in either the rendering of the occupation or professional
91 service being regulated or an activity directly related to the occupation
92 or profession being regulated;

93 (14) "Registration", a requirement established by the general

94 assembly in which a person:

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

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

97 Notification may include the person's name and address, the person's
98 agent for service of process, the location of the activity to be
99 performed, and a description of the service the person
100 provides. Registration may include a requirement to post a bond but
101 does not include education or experience requirements. Nonregistered
102 persons shall not perform the occupation for compensation or use
103 "registered" as a designated title. The term registration shall not be
104 synonymous with an occupational license;

105 (15) "Regulatory entity", any board, commission, agency, division,
106 or other unit or subunit of state government which regulates one or
107 more professions, occupations, industries, businesses, or other
108 endeavors in this state;

109 (16) "State agency", every state office, department, board,
110 commission, regulatory entity, and agency of the state, and, if provided
111 by law, programs and activities involving less than the full
112 responsibility of a state agency;

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

117 3. After January 1, 2019, applicant groups shall submit each of
118 the following factors within three days of bill filing to the department:

119 (1) A description of the professional or occupational group
120 proposed for regulation or expansion of regulation, including the
121 number of individuals or business entities that would be subject to
122 regulation, the names and addresses of associations, organizations, and
123 other groups representing the practitioners, and an estimate of the
124 number of practitioners in each group;

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

129 (3) The nature and extent of potential harm to the public if the
130 profession or occupation is not regulated, the extent to which there is

131 a threat to the general welfare and production of evidence of potential
132 harm, including a description of any complaints filed with state law
133 enforcement authorities, courts, departmental agencies, other
134 professional or occupational boards, and professional and occupational
135 associations that have been lodged against practitioners of the
136 profession or occupation in this state within the past five years;

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

142 (5) The extent to which regulation or expansion of regulation of
143 the profession or occupation will increase the cost of goods or services
144 provided by practitioners and the overall cost-effectiveness and
145 economic impact of the proposed regulation, including the direct cost
146 to the government and the indirect costs to consumers;

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

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

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

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

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

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

167 (12) Whether the proposed requirements for regulation exceed

168 the standards of minimal competence and what those standards are;

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

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

176 4. Applicant groups shall submit a written report explaining the
177 factors enumerated in subsection 3 of this section to the
178 department. The department shall attach the data collected from the
179 applicant groups to the bill's fiscal note.

180 [2.] 5. There is hereby established a "Division of Professional
181 Registration" assigned to the department of insurance, financial institutions and
182 professional registration as a type III transfer, headed by a director appointed by
183 the governor with the advice and consent of the senate. All of the general
184 provisions, definitions and powers enumerated in section 1 of the Omnibus State
185 Reorganization Act of 1974 and Executive Order 06-04 shall apply to this
186 department and its divisions, agencies, and personnel.

187 [3.] 6. The director of the division of professional registration shall
188 promulgate rules and regulations which designate for each board or commission
189 assigned to the division the renewal date for licenses or certificates. After the
190 initial establishment of renewal dates, no director of the division shall
191 promulgate a rule or regulation which would change the renewal date for licenses
192 or certificates if such change in renewal date would occur prior to the date on
193 which the renewal date in effect at the time such new renewal date is specified
194 next occurs. Each board or commission shall by rule or regulation establish
195 licensing periods of one, two, or three years. Registration fees set by a board or
196 commission shall be effective for the entire licensing period involved, and shall
197 not be increased during any current licensing period. Persons who are required
198 to pay their first registration fees shall be allowed to pay the pro rata share of
199 such fees for the remainder of the period remaining at the time the fees are
200 paid. Each board or commission shall provide the necessary forms for initial
201 registration, and thereafter the director may prescribe standard forms for renewal
202 of licenses and certificates. Each board or commission shall by rule and
203 regulation require each applicant to provide the information which is required to

204 keep the board's records current. Each board or commission shall have the
205 authority to collect and analyze information required to support workforce
206 planning and policy development. Such information shall not be publicly
207 disclosed so as to identify a specific health care provider, as defined in section
208 376.1350. Each board or commission shall issue the original license or certificate.

209 [4.] 7. The division shall provide clerical and other staff services relating
210 to the issuance and renewal of licenses for all the professional licensing and
211 regulating boards and commissions assigned to the division. The division shall
212 perform the financial management and clerical functions as they each relate to
213 issuance and renewal of licenses and certificates. "Issuance and renewal of
214 licenses and certificates" means the ministerial function of preparing and
215 delivering licenses or certificates, and obtaining material and information for the
216 board or commission in connection with the renewal thereof. It does not include
217 any discretionary authority with regard to the original review of an applicant's
218 qualifications for licensure or certification, or the subsequent review of licensee's
219 or certificate holder's qualifications, or any disciplinary action contemplated
220 against the licensee or certificate holder. The division may develop and
221 implement microfilming systems and automated or manual management
222 information systems.

223 [5.] 8. The director of the division shall maintain a system of accounting
224 and budgeting, in cooperation with the director of the department, the office of
225 administration, and the state auditor's office, to ensure proper charges are made
226 to the various boards for services rendered to them. The general assembly shall
227 appropriate to the division and other state agencies from each board's funds
228 moneys sufficient to reimburse the division and other state agencies for all
229 services rendered and all facilities and supplies furnished to that board.

230 [6.] 9. For accounting purposes, the appropriation to the division and to
231 the office of administration for the payment of rent for quarters provided for the
232 division shall be made from the "Professional Registration Fees Fund", which is
233 hereby created, and is to be used solely for the purpose defined in subsection [5]
234 8 of this section. The fund shall consist of moneys deposited into it from each
235 board's fund. Each board shall contribute a prorated amount necessary to fund
236 the division for services rendered and rent based upon the system of accounting
237 and budgeting established by the director of the division as provided in
238 subsection [5] 8 of this section. Transfers of funds to the professional registration
239 fees fund shall be made by each board on July first of each year; provided,

240 however, that the director of the division may establish an alternative date or
241 dates of transfers at the request of any board. Such transfers shall be made until
242 they equal the prorated amount for services rendered and rent by the
243 division. The provisions of section 33.080 to the contrary notwithstanding, money
244 in this fund shall not be transferred and placed to the credit of general revenue.

245 [7.] 10. The director of the division shall be responsible for collecting and
246 accounting for all moneys received by the division or its component agencies. Any
247 money received by a board or commission shall be promptly given, identified by
248 type and source, to the director. The director shall keep a record by board and
249 state accounting system classification of the amount of revenue the director
250 receives. The director shall promptly transmit all receipts to the department of
251 revenue for deposit in the state treasury to the credit of the appropriate
252 fund. The director shall provide each board with all relevant financial
253 information in a timely fashion. Each board shall cooperate with the director by
254 providing necessary information.

255 [8.] 11. All educational transcripts, test scores, complaints, investigatory
256 reports, and information pertaining to any person who is an applicant or licensee
257 of any agency assigned to the division of professional registration by statute or
258 by the department are confidential and may not be disclosed to the public or any
259 member of the public, except with the written consent of the person whose records
260 are involved. The agency which possesses the records or information shall
261 disclose the records or information if the person whose records or information is
262 involved has consented to the disclosure. Each agency is entitled to the
263 attorney-client privilege and work-product privilege to the same extent as any
264 other person. Provided, however, that any board may disclose confidential
265 information without the consent of the person involved in the course of voluntary
266 interstate exchange of information, or in the course of any litigation concerning
267 that person, or pursuant to a lawful request, or to other administrative or law
268 enforcement agencies acting within the scope of their statutory
269 authority. Information regarding identity, including names and addresses,
270 registration, and currency of the license of the persons possessing licenses to
271 engage in a professional occupation and the names and addresses of applicants
272 for such licenses is not confidential information.

273 [9.] 12. Any deliberations conducted and votes taken in rendering a final
274 decision after a hearing before an agency assigned to the division shall be closed
275 to the parties and the public. Once a final decision is rendered, that decision

276 shall be made available to the parties and the public.

277 [10.] 13. A compelling governmental interest shall be deemed to exist for
278 the purposes of section 536.025 for licensure fees to be reduced by emergency
279 rule, if the projected fund balance of any agency assigned to the division of
280 professional registration is reasonably expected to exceed an amount that would
281 require transfer from that fund to general revenue.

282 [11.] 14. (1) The following boards and commissions are assigned by
283 specific type transfers to the division of professional registration: Missouri state
284 board of accountancy, chapter 326; board of cosmetology and barber examiners,
285 chapters 328 and 329; Missouri board for architects, professional engineers,
286 professional land surveyors and landscape architects, chapter 327; Missouri state
287 board of chiropractic examiners, chapter 331; state board of registration for the
288 healing arts, chapter 334; Missouri dental board, chapter 332; state board of
289 embalmers and funeral directors, chapter 333; state board of optometry, chapter
290 336; Missouri state board of nursing, chapter 335; board of pharmacy, chapter
291 338; state board of podiatric medicine, chapter 330; Missouri real estate
292 appraisers commission, chapter 339; and Missouri veterinary medical board,
293 chapter 340. The governor shall appoint members of these boards by and with
294 the advice and consent of the senate.

295 (2) The boards and commissions assigned to the division shall exercise all
296 their respective statutory duties and powers, except those clerical and other staff
297 services involving collecting and accounting for moneys and financial
298 management relating to the issuance and renewal of licenses, which services shall
299 be provided by the division, within the appropriation therefor. Nothing herein
300 shall prohibit employment of professional examining or testing services from
301 professional associations or others as required by the boards or commissions on
302 contract. Nothing herein shall be construed to affect the power of a board or
303 commission to expend its funds as appropriated. However, the division shall
304 review the expense vouchers of each board. The results of such review shall be
305 submitted to the board reviewed and to the house and senate appropriations
306 committees annually.

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

312 (4) "Board personnel", as used in this section or chapters 317, 326, 327,
313 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall
314 mean personnel whose functions and responsibilities are in areas not related to
315 the clerical duties involving the issuance and renewal of licenses, to the collecting
316 and accounting for moneys, or to financial management relating to issuance and
317 renewal of licenses; specifically included are executive secretaries (or comparable
318 positions), consultants, inspectors, investigators, counsel, and secretarial support
319 staff for these positions; and such other positions as are established and
320 authorized by statute for a particular board or commission. Boards and
321 commissions may employ legal counsel, if authorized by law, and temporary
322 personnel if the board is unable to meet its responsibilities with the employees
323 authorized above. Any board or commission which hires temporary employees
324 shall annually provide the division director and the appropriation committees of
325 the general assembly with a complete list of all persons employed in the previous
326 year, the length of their employment, the amount of their remuneration, and a
327 description of their responsibilities.

328 (5) Board personnel for each board or commission shall be employed by
329 and serve at the pleasure of the board or commission, shall be supervised as the
330 board or commission designates, and shall have their duties and compensation
331 prescribed by the board or commission, within appropriations for that purpose,
332 except that compensation for board personnel shall not exceed that established
333 for comparable positions as determined by the board or commission pursuant to
334 the job and pay plan of the department of insurance, financial institutions and
335 professional registration. Nothing herein shall be construed to permit salaries
336 for any board personnel to be lowered except by board action.

337 [12.] 15. All the powers, duties, and functions of the division of athletics,
338 chapter 317, and others, are assigned by type I transfer to the division of
339 professional registration.

340 [13.] 16. Wherever the laws, rules, or regulations of this state make
341 reference to the division of professional registration of the department of
342 economic development, such references shall be deemed to refer to the division
343 of professional registration.

344 [14.] 17. (1) The state board of nursing, board of pharmacy, Missouri
345 dental board, state committee of psychologists, state board of chiropractic
346 examiners, state board of optometry, Missouri board of occupational therapy, or
347 state board of registration for the healing arts may individually or collectively

348 enter into a contractual agreement with the department of health and senior
349 services, a public institution of higher education, or a nonprofit entity for the
350 purpose of collecting and analyzing workforce data from its licensees, registrants,
351 or permit holders for future workforce planning and to assess the accessibility
352 and availability of qualified health care services and practitioners in
353 Missouri. The boards shall work collaboratively with other state governmental
354 entities to ensure coordination and avoid duplication of efforts.

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

359 (3) Data collection shall be controlled and approved by the applicable state
360 board conducting or requesting the collection. Notwithstanding the provisions of
361 sections 324.010 and 334.001, the boards may release identifying data to the
362 contractor to facilitate data analysis of the health care workforce including, but
363 not limited to, geographic, demographic, and practice or professional
364 characteristics of licensees. The state board shall not request or be authorized
365 to collect income or other financial earnings data.

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

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

382 (6) Each board may promulgate rules subject to the provisions of this
383 subsection and chapter 536 to effectuate and implement the workforce data

384 collection and analysis authorized by this subsection. Any rule or portion of a
385 rule, as that term is defined in section 536.010, that is created under the
386 authority delegated in this section shall become effective only if it complies with
387 and is subject to all of the provisions of chapter 536 and, if applicable, section
388 536.028. This section and chapter 536 are nonseverable and if any of the powers
389 vested with the general assembly under chapter 536 to review, to delay the
390 effective date, or to disapprove and annul a rule are subsequently held
391 unconstitutional, then the grant of rulemaking authority and any rule proposed
392 or adopted after August 28, 2016, shall be invalid and void.

Unofficial

Bill

Copy