

FIRST REGULAR SESSION

HOUSE BILL NO. 634

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BURLISON.

1568H.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Section A. Section 324.001, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 324.001, to read as follows: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, 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 a compelling 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) It is the intent of this chapter that no regulation shall, after January 1, 2016, be imposed upon any occupation or profession except for the exclusive purpose of protecting the general welfare.

(4) 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:

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.

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

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

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

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

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

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

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

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

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

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

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

47 (2) "Certification", a voluntary program in which the government grants
48 nontransferable recognition to an individual who meets personal qualifications established
49 by a legislative body. Upon approval, the individual may use "certified" as a designated
50 title. Someone who has not been recognized as certified may perform the occupation for

51 **compensation lawfully, but shall not use the title “certified”. This term shall not be**
52 **synonymous with an occupational license or prohibit the use of private certification;**

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

55 **[(2)] (4) "Director", the director of the division of professional registration; and**

56 **[(3)] (5) "Division", the division of professional registration;**

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

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

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

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

70 **(10) "Least restrictive type of occupational regulations", in order from least to most**
71 **restrictive:**

72 **(a) Market competition;**

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

74 **(c) Criminal sanction;**

75 **(d) Regulation of the business activity providing the service rather than the**
76 **practitioner;**

77 **(e) Inspection;**

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

79 **(g) Registration;**

80 **(h) Certification;**

81 **(i) Occupational license;**

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

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

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

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

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

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

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

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

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

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

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

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

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

124 **[2.] 3. After January 1, 2016, applicant groups shall explain each of the following**
125 **factors to the extent requested by the legislative committees of reference:**

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

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

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

131 **(c) A description of how consumers will benefit in the future from the proposed**
132 **type of regulation; and**

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

134 **a. The extent to which the occupation or profession calls for independent judgment**
135 **and the extent of skill or experience required in making the independent judgment; and**

136 **b. The extent to which practitioners are supervised;**

137 **(2) The efforts made to address the actual harm caused:**

138 **(a) Voluntary efforts, if any, by members of the occupation or profession to:**

139 **a. Establish a code of ethics; or**

140 **b. Help resolve disputes between practitioners and consumers; and**

141 **(b) Recourse to and the extent of use of applicable law and whether it could be**
142 **strengthened to control the problem;**

143 **(3) The alternatives considered including, but not limited to:**

144 **(a) Increased civil or criminal sanctions;**

145 **(b) Regulation of businesses rather than practitioners;**

146 **(c) Regulation of the service or training program rather than the individual**
147 **practitioners;**

148 **(d) Inspections;**

149 **(e) Bonding or insurance;**

150 **(f) Registration of all practitioners;**

151 **(g) Certification of all practitioners;**

152 **(h) Other alternatives;**

153 **(i) Why the use of the alternatives specified in this subsection would not be**
154 **adequate to protect the general welfare; and**

155 **(j) Why licensing would serve to protect the general welfare;**

156 **(4) The benefit to the public if regulation is granted;**

157 **(5) The extent to which the incidences of specific problems present in the**
158 **unregulated occupation or profession can reasonably be expected to be reduced by**
159 **proposed regulation;**

160 **(6) Whether the public can identify qualified practitioners;**

161 **(7) The extent to which the public can be confident that qualified practitioners are**
162 **competent:**

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

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

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

179 **(d) Whether the regulatory entity would be authorized to enter into reciprocity**
180 **agreements with other jurisdictions;**

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

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

- 193 **(8) Assurance of the public that practitioners have maintained their competence:**
194 **(a) Whether the registration, certification, or licensure will carry an expiration**
195 **date; and**
196 **(b) Whether renewal will be based only upon payment of a fee, or whether renewal**
197 **will involve reexamination, peer review, or other enforcement;**
198 **(9) The extent to which regulation might harm the public;**
199 **(10) The extent to which regulation will restrict entry into the occupation or**
200 **profession:**
201 **(a) Whether the proposed personal qualifications are more restrictive than**
202 **necessary to insure safe and effective performance;**
203 **(b) How the proposed personal qualifications compare to other regulations in the**
204 **state which may involve greater risks to the general welfare; and**
205 **(c) The number of other states that regulate the same occupation or profession and**
206 **how the proposed personal qualifications compare to required personal qualifications in**
207 **other states that regulate the same occupation or profession;**
208 **(11) Whether there are similar professions to that of the applicant group which**
209 **shall be included in or portions of the applicant group which shall be excluded from the**
210 **proposed legislation;**
211 **(12) The maintenance of personal qualifications;**
212 **(13) Whether effective quality assurance standards exist in the occupation or**
213 **profession, such as legal requirements associated with specific programs that define or**
214 **enforce professional standards, or a code of ethics;**
215 **(14) How the proposed legislation will assure:**
216 **(a) The extent to which a code of ethics, if any, will be adopted; and**
217 **(b) Grounds for suspension or revocation of registration, certification, or licensure;**
218 **(15) A description of the group proposed for regulation, including a list of**
219 **associations, organizations, and other groups representing the practitioners in this state,**
220 **an estimate of the number of practitioners in each group, and whether the groups**
221 **represent different levels of practice; and**
222 **(16) The expected costs of regulation including, but not limited to:**
223 **(a) The impact registration, certification, or licensure will have on the costs of the**
224 **services to the public;**
225 **(b) The cost to the state and to the general public of implementing the proposed**
226 **legislation; and**

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

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

232 **5. Due to the fact that requirements for licensees to engage in continuing education**
233 **as a condition of continued licensure have not been proven to be an effective method of**
234 **guaranteeing or improving the competence of licensees or the quality of care received by**
235 **the consumer, any legislative proposal which contains a continuing education requirement**
236 **shall be accompanied by evidence that such a requirement has been proven effective for**
237 **the profession addressed in the legislation.**

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

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

248 [3.] **8.** The director of the division of professional registration shall promulgate rules and
249 regulations which designate for each board or commission assigned to the division the renewal
250 date for licenses or certificates. After the initial establishment of renewal dates, no director of
251 the division shall promulgate a rule or regulation which would change the renewal date for
252 licenses or certificates if such change in renewal date would occur prior to the date on which the
253 renewal date in effect at the time such new renewal date is specified next occurs. Each board or
254 commission shall by rule or regulation establish licensing periods of one, two, or three years.
255 Registration fees set by a board or commission shall be effective for the entire licensing period
256 involved, and shall not be increased during any current licensing period. Persons who are
257 required to pay their first registration fees shall be allowed to pay the pro rata share of such fees
258 for the remainder of the period remaining at the time the fees are paid. Each board or
259 commission shall provide the necessary forms for initial registration, and thereafter the director
260 may prescribe standard forms for renewal of licenses and certificates. Each board or commission
261 shall by rule and regulation require each applicant to provide the information which is required
262 to keep the board's records current. Each board or commission shall have the authority to collect

263 and analyze information required to support workforce planning and policy development. Such
264 information shall not be publicly disclosed so as to identify a specific health care provider, as
265 defined in section 376.1350. Each board or commission shall issue the original license or
266 certificate.

267 [4.] 9. The division shall provide clerical and other staff services relating to the issuance
268 and renewal of licenses for all the professional licensing and regulating boards and commissions
269 assigned to the division. The division shall perform the financial management and clerical
270 functions as they each relate to issuance and renewal of licenses and certificates. "Issuance and
271 renewal of licenses and certificates" means the ministerial function of preparing and delivering
272 licenses or certificates, and obtaining material and information for the board or commission in
273 connection with the renewal thereof. It does not include any discretionary authority with regard
274 to the original review of an applicant's qualifications for licensure or certification, or the
275 subsequent review of licensee's or certificate holder's qualifications, or any disciplinary action
276 contemplated against the licensee or certificate holder. The division may develop and implement
277 microfilming systems and automated or manual management information systems.

278 [5.] 10. The director of the division shall maintain a system of accounting and budgeting,
279 in cooperation with the director of the department, the office of administration, and the state
280 auditor's office, to ensure proper charges are made to the various boards for services rendered
281 to them. The general assembly shall appropriate to the division and other state agencies from
282 each board's funds moneys sufficient to reimburse the division and other state agencies for all
283 services rendered and all facilities and supplies furnished to that board.

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

297 [7.] 12. The director of the division shall be responsible for collecting and accounting
298 for all moneys received by the division or its component agencies. Any money received by a

299 board or commission shall be promptly given, identified by type and source, to the director. The
300 director shall keep a record by board and state accounting system classification of the amount
301 of revenue the director receives. The director shall promptly transmit all receipts to the
302 department of revenue for deposit in the state treasury to the credit of the appropriate fund. The
303 director shall provide each board with all relevant financial information in a timely fashion.
304 Each board shall cooperate with the director by providing necessary information.

305 [8.] 13. All educational transcripts, test scores, complaints, investigatory reports, and
306 information pertaining to any person who is an applicant or licensee of any agency assigned to
307 the division of professional registration by statute or by the department are confidential and may
308 not be disclosed to the public or any member of the public, except with the written consent of
309 the person whose records are involved. The agency which possesses the records or information
310 shall disclose the records or information if the person whose records or information is involved
311 has consented to the disclosure. Each agency is entitled to the attorney-client privilege and
312 work-product privilege to the same extent as any other person. Provided, however, that any
313 board may disclose confidential information without the consent of the person involved in the
314 course of voluntary interstate exchange of information, or in the course of any litigation
315 concerning that person, or pursuant to a lawful request, or to other administrative or law
316 enforcement agencies acting within the scope of their statutory authority. Information regarding
317 identity, including names and addresses, registration, and currency of the license of the persons
318 possessing licenses to engage in a professional occupation and the names and addresses of
319 applicants for such licenses is not confidential information.

320 [9.] 14. Any deliberations conducted and votes taken in rendering a final decision after
321 a hearing before an agency assigned to the division shall be closed to the parties and the public.
322 Once a final decision is rendered, that decision shall be made available to the parties and the
323 public.

324 [10.] 15. A compelling governmental interest shall be deemed to exist for the purposes
325 of section 536.025 for licensure fees to be reduced by emergency rule, if the projected fund
326 balance of any agency assigned to the division of professional registration is reasonably expected
327 to exceed an amount that would require transfer from that fund to general revenue.

328 [11.] 16. (1) The following boards and commissions are assigned by specific type
329 transfers to the division of professional registration: Missouri state board of accountancy,
330 chapter 326; board of cosmetology and barber examiners, chapters 328 and 329; Missouri board
331 for architects, professional engineers, professional land surveyors and landscape architects,
332 chapter 327; Missouri state board of chiropractic examiners, chapter 331; state board of
333 registration for the healing arts, chapter 334; Missouri dental board, chapter 332; state board of
334 embalmers and funeral directors, chapter 333; state board of optometry, chapter 336; Missouri

335 state board of nursing, chapter 335; board of pharmacy, chapter 338; state board of podiatric
336 medicine, chapter 330; Missouri real estate appraisers commission, chapter 339; and Missouri
337 veterinary medical board, chapter 340. The governor shall appoint members of these boards by
338 and with the advice and consent of the senate.

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

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

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

366 (5) Board personnel for each board or commission shall be employed by and serve at the
367 pleasure of the board or commission, shall be supervised as the board or commission designates,
368 and shall have their duties and compensation prescribed by the board or commission, within
369 appropriations for that purpose, except that compensation for board personnel shall not exceed
370 that established for comparable positions as determined by the board or commission pursuant

371 to the job and pay plan of the department of insurance, financial institutions and professional
372 registration. Nothing herein shall be construed to permit salaries for any board personnel to be
373 lowered except by board action.

374 [12.] 17. All the powers, duties, and functions of the division of athletics, chapter 317,
375 and others, are assigned by type I transfer to the division of professional registration.

376 [13.] 18. Wherever the laws, rules, or regulations of this state make reference to the
377 "division of professional registration of the department of economic development", such
378 references shall be deemed to refer to the division of professional registration.

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