

HOUSE BILL NO. 1928

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROSS.

5701H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 324, RSMo, by adding thereto one new section relating to professional registration.

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

Section A. Chapter 324, RSMo, is amended by adding thereto one new section, to be known as section 324.047, to read as follows:

324.047. 1. The purpose of this section is to promote general welfare by establishing guidelines for the regulation of occupations and professions not regulated prior to January 1, 2019, and those occupations and professions regulated prior to January 1, 2019, that seek to substantially increase their scope of practice.

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

(1) "Applicant group", any occupational or professional group or organization, any individual, or any other interested party that supports a bill that proposes to regulate any occupation or profession not presently regulated or proposes to substantially increase the scope of practice of a currently regulated occupation or profession;

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

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

(4) "Director", the director of the division of professional registration;

(5) "Division", the division of professional registration;

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

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

23 (8) "Least restrictive type of occupational regulation", the regulation that is least
24 restrictive, in which the following list of regulations in order from least to most restrictive
25 is used to make such determination:

26 (a) Bonding or insurance;

27 (b) Registration;

28 (c) Certification;

29 (d) Occupational license;

30 (9) "Occupational license", a nontransferable authorization in law for an
31 individual to perform a lawful occupation for compensation based on meeting personal
32 qualifications established by a legislative body and that, if not possessed, prohibits the
33 individual from performing the occupation for compensation;

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

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

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

43 (13) "Registration", a requirement established by the legislature in which an
44 individual:

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

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

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48 Notification may include the individual's name and address, the individual's agent for
49 service of process, the location of the activity to be performed, and a description of the
50 service the individual provides. Registration may include a requirement to post a bond but
51 does not include education or experience requirements. If the requirement of registration
52 is not met, the individual is prohibited from performing the occupation for compensation

53 or using "registered" as a designated title. The term "registration" shall not be
54 synonymous with an occupational license;

55 (14) "Regulatory entity", any board, commission, agency, division, or other unit
56 or subunit of state government that regulates one or more professions, occupations,
57 industries, businesses, or other endeavors in this state;

58 (15) "State agency", every state office, department, board, commission, regulatory
59 entity, and agency of the state. The term "state agency" includes, if provided by law,
60 programs and activities involving less than the full responsibility of a state agency;

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

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

70 4. All bills introduced in the legislature to regulate an occupation or profession
71 shall be reviewed according to the following criteria. An occupation or profession shall be
72 regulated by the state if:

73 (1) Unregulated practice could cause harm and endanger the general welfare, and
74 the potential for further harm and endangerment is recognizable and not remote or
75 dependent upon tenuous argument;

76 (2) The public can reasonably be expected to benefit from an assurance of personal
77 qualifications; and

78 (3) The general welfare cannot be sufficiently protected by other means.

79 5. After evaluating the criteria in subdivision (3) of this subsection and considering
80 governmental, economic, and societal costs and benefits, if the legislature finds that the
81 state has a reasonable interest in regulating an occupation or profession not previously
82 regulated by law, the most efficient form of regulation shall be implemented, consistent
83 with this section and with the need to protect the general welfare, as follows:

84 (1) If the threat to the general welfare resulting from the practitioner's services is
85 easily predictable, the regulation shall implement a system of insurance, bonding, or
86 registration;

87 (2) If the consumer has challenges accessing credentialing information or possesses
88 significantly less information on how to report abuses such that the practitioner puts the

89 consumer in a disadvantageous position relative to the practitioner to judge the quality of
90 the practitioner's services, the regulation shall implement a system of certification; and

91 (3) If other regulatory structures, such as bonding, insurance, registration, and
92 certification, insufficiently protect the general welfare from recognizable harm, the
93 regulation shall implement a system of licensing.

94 6. After January 1, 2019, any relevant regulatory entity shall report, and the
95 department shall make available to the legislature, upon the filing of a bill that proposes
96 additional regulation of a profession or occupation currently regulated by the regulatory
97 entity, the following factors to the department:

98 (1) A description of the professional or occupational group proposed for expansion
99 of regulation, including the number of individuals or business entities that would be
100 subject to regulation to the extent that such information is available; the names and
101 addresses of associations, organizations, and other groups representing the practitioners;
102 and an estimate of the number of practitioners in each group;

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

106 (3) The nature and extent of potential harm to the public if the profession or
107 occupation is not regulated as described in the bill, the extent to which there is a threat to
108 the general welfare, and production of evidence of potential harm, including a description
109 of any complaints filed with state law enforcement authorities, courts, departmental
110 agencies, professional or occupational boards, and professional and occupational
111 associations that have been lodged against practitioners of the profession or occupation in
112 this state within the past five years. Notwithstanding the provisions of this section or any
113 other section, the relevant regulatory entity shall provide, and the department shall make
114 available to the legislature, the information relating to such complaints even if the
115 information is considered a closed record or otherwise confidential; except that, the
116 regulatory entity and the department shall redact names and other personally identifiable
117 information from the information released;

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

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

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

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

128 (7) The extent to which existing legal remedies are inadequate to prevent or redress
129 the kinds of harm potentially resulting from the lack of the requirements outlined in the
130 bill;

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

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

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

139 (11) Whether the proposed requirements for regulation exceed the national
140 industry standards of minimal competence, if such standards exist, and what those
141 standards are if they exist; and

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

145 7. If no existing regulatory entity regulates the occupation or profession to be
146 regulated in the bill, the department shall report and make available to the legislature,
147 upon the filing of a bill after January 1, 2019, that proposes new regulation of a profession
148 or occupation, the following factors:

149 (1) A description of the professional or occupational group proposed for regulation,
150 including the number of individuals or business entities that would be subject to regulation
151 to the extent that such information is available; the names and addresses of associations,
152 organizations, and other groups representing the practitioners; and an estimate of the
153 number of practitioners in each group;

154 (2) The nature and extent of potential harm to the public if the profession or
155 occupation is not regulated, the extent to which there is a threat to the general welfare, and
156 production of evidence of potential harm, including a description of any complaints filed
157 with state law enforcement authorities, courts, departmental agencies, professional or
158 occupational boards, and professional and occupational associations that have been lodged
159 against practitioners of the profession or occupation in this state within the past five years.

160 Notwithstanding the provisions of this section or any other section, the department shall
161 release the information relating to such complaints even if the information is considered
162 a closed record or otherwise confidential; except that, the department shall redact names
163 and other personally identifiable information from the information released;

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

167 (4) The details of any previous efforts in this state to implement regulation of the
168 profession or occupation; and

169 (5) Whether the proposed requirements for regulation exceed the national industry
170 standards of minimal competence, if such standards exist, and what those standards are
171 if they exist.

172 8. After January 1, 2019, applicant groups may report to the department, and the
173 department shall make available to the legislature, any of the information required in
174 subsection 4 or 5 of this section and whether the profession or occupation plans to apply
175 for mandated benefits.

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