

SECOND REGULAR SESSION

SENATE BILL NO. 848

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SINGLETON.

Pre-filed December 20, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3416S.011

AN ACT

To repeal sections 168.071 and 484.190, RSMo, and section 375.141 as enacted by house committee substitute for senate substitute for senate bill no. 193, ninety-first general assembly, first regular session and section 375.141 as enacted by conference committee substitute for senate committee substitute for house committee substitute for house bill no. 709, eighty-seventh general assembly, first regular session, and to enact in lieu thereof seven new sections relating to certain licensed professionals who are in default on student loans, with an effective date for certain sections.

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

Section A. Sections 168.071 and 484.190, RSMo, and section 375.141 as enacted by house committee substitute for senate substitute for senate bill no. 193, ninety-first general assembly, first regular session and section 375.141 as enacted by conference committee substitute for senate committee substitute for house committee substitute for house bill no. 709, eighty-seventh general assembly, first regular session, are repealed and seven new sections enacted in lieu thereof, to be known as sections 168.071, 173.117, 375.091, 375.141, 484.190, 484.280 and 620.143, to read as follows:

168.071. 1. The Missouri state board of education may refuse to issue or renew, or may suspend or revoke a certificate of license to teach upon satisfactory proof of incompetency, cruelty, immorality, drunkenness, neglect of duty, or the

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

annulling of a written contract for reasons other than election to the general assembly, with the local board of education without the consent of the majority of the members of the board which is a party to the contract. Charges may be filed by any school district or, at the request of the school district, by the office of the attorney general if the school district has been identified as financially stressed pursuant to section 161.520, RSMo. If the underlying conduct or actions which are the basis for charges filed [under] **pursuant to** this subsection are also the subject of a pending criminal charge against the person holding such certificate, and that person requests in writing a delayed hearing on advice of counsel under the fifth amendment of the Constitution of the United States, no hearing shall be held until after final disposition of the criminal charge.

2. The state board of education may refuse to issue or renew, or may, upon hearing, suspend or revoke a certificate of license to teach if a certificate holder or applicant for a certificate has pleaded to or been found guilty of a felony or crime involving moral turpitude under the laws of this state or any other state or of the United States, or any other country, whether or not the sentence is imposed.

3. The certificate of license to teach shall be revoked or, in the case of an applicant, a certificate shall not be issued, if the certificate holder or applicant has pleaded guilty to or been found guilty of any of the following offenses established pursuant to Missouri law or offenses of a similar nature established under the laws of any other state or of the United States, or any other country, whether or not the sentence is imposed:

(1) Any dangerous felony as defined in section 556.061, RSMo, or murder in the first degree;

(2) Any of the following sexual offenses: rape; statutory rape in the first degree; statutory rape in the second degree; sexual assault; forcible sodomy; statutory sodomy in the first degree; statutory sodomy in the second degree; child molestation in the first degree; child molestation in the second degree; deviate sexual assault; sexual misconduct involving a child; sexual misconduct in the first degree; or sexual abuse;

(3) Any of the following offenses against the family and related offenses: incest; abandonment of child in the first degree; abandonment of child in the second degree; endangering the welfare of a child in the first degree; abuse of a child; child used in a sexual performance; promoting sexual performance by a

child; or trafficking in children; and

(4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree; promoting child pornography in the first degree; promoting obscenity in the second degree when the penalty is enhanced to a class D felony; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic materials to minors; coercing acceptance of obscene material; or sale or rental to persons under seventeen.

4. The certificate holder whose certificate was revoked pursuant to subsection 3 of this section may appeal such revocation to the state board of education. The certificate holder whose certificate has been revoked pursuant to subsection 3 of this section must notify the commissioner of education of the intent to appeal by advising the commissioner within thirty days of the certificate holder's plea of guilty or finding of guilt of the intent to appeal. Failure of the certificate holder to notify the commissioner of the intent to appeal waives all rights to appeal [said] **such** revocation. Upon notice of the certificate holder's intent to appeal, an appeal hearing shall be held by a hearing officer designated by the commissioner of education, with the final decision made by the state board of education, based upon the record of that hearing. The certificate holder shall be given not less than thirty days' notice of the hearing, and an opportunity to be heard by the hearing officer, together with witnesses. In those cases where the plea of guilty to or finding of guilt of any of the offenses listed in subsection 3 of this section involve a minor child, testimony from the minor child involved in the complaint shall not be required. The hearing officer shall accept into the record the transcript of any testimony of a child involved in such offense if such testimony was admitted in any court hearing. Subsection 6 of this section shall apply to any final decision made by the state board of education pursuant to this subsection.

5. The charges filed with the state board of education [under] **pursuant to** this section shall be in writing and plainly and fully specify the basis for the charges. The charges shall be signed by the chief administrative officer of the district or by the president of the board of education when so authorized by a majority of the board. The certificate holder shall be given not less than thirty days' notice of the hearing, and an opportunity to be heard, together with witnesses.

6. The certificate holder may appeal to the circuit court at any time within thirty days after receipt of the final decision of the state board of education. The appeal shall be heard with a jury at the option of either the certificate holder or the party filing the charges, and shall be tried de novo, affirming or denying the action of the state board of education. Costs shall be taxed against the appellant if the judgment of the state board of education is affirmed. In those cases where the charges allege immorality by the certificate holder involving a minor child, such case shall be heard by the court without a jury and any testimony from the minor child involved in the complaint shall be taken directly from the hearing record taken on behalf of the state board of education.

7. The issuance of a certificate of license to teach to an individual who has been convicted of a felony or crime involving moral turpitude shall be issued only upon motion of the state board of education adopted by a unanimous affirmative vote of those members present and voting.

8. The state board of education shall refuse to issue or renew, and shall suspend or revoke, any certificate of license to teach upon satisfactory proof that the person is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo. The state board of education shall not refuse to issue or renew, nor shall the state board suspend or revoke, a certificate of license to teach to a person pursuant to this subsection for failure to make satisfactory arrangements to ensure voluntary repayment of a student loan administered by the department of higher education, if the most recent notice from the department of higher education, provided pursuant to section 173.117, RSMo, states that the person has made satisfactory arrangements to ensure voluntary repayment.

173.117. 1. The department of higher education shall provide to the director of the division of professional registration, the state board of education, the clerk of the supreme court and the director of the department of insurance the name of any person who is in default on the repayment of any student loan guaranteed by the department of higher education and who has not made satisfactory arrangements to ensure

voluntary repayment. Such notice shall be provided within sixty days of the determination.

2. The department of higher education shall, within sixty days of the effective date of this section, provide to the director of the division of professional registration, the state board of education, the clerk of the supreme court and the director of the department of insurance the name of every person who is in default on the repayment of any student loan guaranteed by the department of higher education on and after the effective date of this section and who has not made satisfactory arrangements to ensure voluntary repayment.

3. The department of higher education shall promulgate by rule a procedure for determining when a person in default on a student loan has made satisfactory arrangements to ensure voluntary repayment of the loan. Any person aggrieved by a decision of the department pursuant to this section may appeal such decision, and a hearing on such appeal shall be made as provided in section 173.115.

4. The department of higher education is authorized to garnish any state payment to a person who is in default on the repayment of a student loan administered by the department, including, but not limited to, state income tax refunds and lottery winnings.

5. The department of higher education shall provide to the director of the division of professional registration, the state board of education, the clerk of the supreme court and the director of the department of insurance the name of any person who has made satisfactory arrangements pursuant to subsection 3 of this section to ensure the repayment of a loan on which that person is in default within sixty days of the department's determination that such person has made satisfactory arrangements to ensure voluntary repayment.

375.091. No license required by this chapter shall be issued to any person who is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo. No person shall be denied any license required by this chapter for failure to make satisfactory arrangements to ensure voluntary repayment of a student loan administered by the department of higher education, if the most recent notice from the department of

higher education, provided pursuant to section 173.117, RSMo, states that the person has made satisfactory arrangements to ensure voluntary repayment.

375.141. 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony or crime involving moral turpitude;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) Signing the name of another to an application for insurance or to any document related to an insurance transaction without authorization;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed;

(13) Failing to comply with an administrative or court order imposing a child support obligation; or

(14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

2. The director shall not issue or renew any license to any

insurance agent or broker if such person is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo. The director may issue or renew any license which was denied or not renewed pursuant to this subsection, if the most recent notice from the department of higher education, provided pursuant to section 173.117, RSMo, states that the person has made satisfactory arrangements to ensure voluntary repayment.

3. In the event that the action by the director is not to renew or to deny an application for a license, the director shall notify the applicant or licensee in writing and advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the nonrenewal or denial of the application for a license shall be made pursuant to the provisions of chapter 621, RSMo.

[3.] **4.** The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

[4.] **5.** The director may also revoke or suspend pursuant to subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

[5.] **6.** Every insurance producer licensed in this state shall notify the director of any change of address, on forms prescribed by the director, within thirty days of the change. If the failure to notify the director of the change of address results in an inability to serve the insurance producer with a complaint as provided by sections 621.045 to 621.198, RSMo, then the director may immediately revoke the license of the insurance producer until such time as service may be obtained.

[6.] **7.** An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

[7.] **8.** Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

[375.141. 1. The director may revoke or suspend, for such period as he or she may determine, any license of any insurance agent, agency or broker if it is determined as provided by sections 621.045 to 621.198, RSMo, that the licensee or applicant has, at any time, or if an insurance agency, the officers, owners or managers thereof have:

(1) In their dealings as an agent, broker or insurance agency, knowingly violated any provisions of, or any obligation imposed by, the laws of this state, department of insurance rules and regulations, or aided, abetted or knowingly allowed any insurance agent or insurance broker acting in behalf of an insurance agency to violate such laws, orders, rules or regulations which result in the revocation or suspension of the agent's or broker's license notwithstanding the same may provide for separate penalties;

(2) Obtained or attempted to obtain license by fraud, misrepresentation or made a material misstatement in the application for license;

(3) Been convicted of a felony or crime involving moral turpitude;

(4) Demonstrated lack of trustworthiness or competence;

(5) Misappropriated or converted to his, her or its own use or illegally withheld money belonging to an insurance company, its agent, or to an insured or beneficiary or prospective insurance buyer;

(6) Practiced or aided or abetted in the practice of fraud, forgery, deception, collusion or conspiracy in connection with any insurance transaction;

(7) Acted as an insurance agency through persons not licensed as insurance agents or insurance brokers;

(8) Acted as an insurance agent, insurance agency, or insurance broker when not licensed as such;

(9) Had revoked or suspended any insurance license by another state;

(10) Committed unfair practices as defined in section 375.936;

(11) Sought the license for the primary purpose of soliciting, negotiating or procuring insurance contracts covering himself or herself or his or her family or insurance on property owned by his or her employer or any person who is employed by him or her or by a corporation, partnership or association of which he or she shall own or control a majority of the voting stock or a controlling interest;

(12) Is a legal resident of another state, licensed pursuant to section 375.017 or 375.126, which other state does not allow legal residents of Missouri to obtain a license to act as an agent or broker and to transact the business of solicitation of, negotiation for, or procurement or making of, insurance or annuity contracts;

(13) Owned or operated an insurance business in this state if the agent, broker or agency knew, or should have known, that the result was, or was likely to have been, an illegal placement of insurance with an unauthorized "multiple employer self-insured health plan" as that term is defined in section 376.1000, RSMo, or the subsequent servicing of an insurance policy illegally placed with an unauthorized multiple employer self-insured health plan.

2. The director may refuse to issue any license to any insurance agent, agency or broker if he or she determines that the licensee or applicant has, at any time, or if an insurance agency, the officers, owners or managers thereof have violated any of the provisions set out in subsection 1 of this section.

3. Every agent or broker licensed in this state shall notify the director, in writing, within thirty days, of any change in his or her residence address, and any agency licensed in this state shall notify the director, in writing, within thirty days, of any change in its business address. If the failure to notify the director of such change in address results in an inability to serve an agent, broker or agency with a complaint as provided by sections 621.045 to 621.198, RSMo, then the director may immediately revoke the license of said agent, broker or agency until such time as service may be obtained.

4. The director may also revoke or suspend under subsection 1 of this section any license issued by the director where the licensee has failed

to renew or has surrendered such license.]

484.190. Any attorney or counselor at law may be removed or suspended from practice in the courts of this state for any of the following reasons:

(1) If [he be] **the attorney is** convicted of any criminal offense involving moral turpitude;

(2) If [he] **the attorney** unlawfully [retain his] **retains the attorney's** client's money or if [he] **the attorney** is guilty of any malpractice, fraud, deceit or misdemeanor whatsoever in [his] **the attorney's** professional capacity;

(3) If [he] **the attorney** shall have been removed, suspended or disbarred from the practice of law in any other state or jurisdiction and shall fail to disclose such fact in [his] **the attorney's** application for license to practice law in this state[.];

(4) If the attorney avoids in bad faith the repayment of any student loan guaranteed by the department of higher education; provided that while the lawful discharge of a student loan in bankruptcy proceedings shall not constitute bad faith pursuant to this section, such discharge shall not preclude a review of the attorney's conduct to determine if it constitutes bad faith.

484.280. 1. The board of law examiners shall not permit any person to take the bar examination if such person is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo. No person shall be denied permission to take the bar examination pursuant to this section if the most recent notice from the department of higher education, provided pursuant to section 173.117, RSMo, states that the person has made satisfactory arrangements to ensure voluntary repayment.

2. No person shall be admitted to the Missouri Bar if such person is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo. No person shall be denied eligibility to apply for admission to the Missouri Bar pursuant to this section if the most recent notice from the department of higher education, provided pursuant to section 173.117,

RSMo, states that the person has made satisfactory arrangements to ensure voluntary repayment.

3. No attorney shall be permitted to pay the annual enrollment fee required by renewal of a license to practice law pursuant to supreme court rule 6.01 if such attorney is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo, and in such case the attorney shall be automatically suspended. Any attorney thus suspended for failure to make satisfactory arrangements to ensure voluntary repayment of a student loan shall be retroactively reinstated as a matter of course upon receipt of the supreme court of notice from the department of higher education, provided pursuant to section 173.117, RSMo, stating that the attorney has made satisfactory arrangements to ensure voluntary repayment. No attorney shall be prohibited from paying the annual enrollment fee required by supreme court rule 6.01 if the most recent notice from the department of higher education, provided pursuant to section 173.117, RSMo, states that the attorney has made satisfactory arrangements to ensure voluntary repayment.

4. It shall be considered professional misconduct for an attorney to avoid in bad faith the repayment of any student loan guaranteed by the department of higher education; except that, the lawful discharge of a student loan in a bankruptcy proceeding, if such a discharge is permitted, shall not constitute bad faith. Such discharge shall not preclude a review of the attorney's conduct to determine if the attorney's conduct constitutes bad faith.

620.143. 1. The director of the division of professional registration shall notify each board and commission in the division of the name of every person regulated by such board or commission who is in default on the repayment of any student loan guaranteed by the department of higher education and shall also notify each board and commission in the division of the name of every person regulated by such board or commission who has made satisfactory arrangements to ensure voluntary repayment of a student loan on which that person is in default within thirty days of receiving such notice from the department pursuant to section 173.117, RSMo.

2. The director of the division of professional registration shall maintain as a part of the registry of licensees established pursuant to section 620.145, a special indicator which shows the status of the licensee with regard to repayment of student loans administered by the department of higher education.

3. No board or commission in the division of professional registration shall grant any license or license renewal to any person if that person is in default on the repayment of any student loan guaranteed by the department of higher education and has not made satisfactory arrangements to ensure voluntary repayment of the loan as determined by the department of higher education pursuant to section 173.117, RSMo.

4. No board or commission in the division of professional registration shall deny, pursuant to this section, any license or license renewal to any person in default on any student loan guaranteed by the department of higher education if the most recent notice from the department of higher education, provided pursuant to section 173.117, RSMo, states that the person has made satisfactory arrangements to ensure voluntary repayment.

Section B. The enactment of section 375.091, the repeal and reenactment of section 375.141 as enacted by house committee substitute for senate substitute for senate bill no. 193, ninety-first general assembly, first regular session and the repeal of section 375.141 as enacted by conference committee substitute for senate committee substitute for house committee substitute for house bill no. 709, eighty-seventh general assembly, first regular session shall become effective January 1, 2003.

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