

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 325

96TH GENERAL ASSEMBLY

2011

1709L.04T

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## AN ACT

To repeal sections 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 335.036, 335.200, 335.203, 335.206, 335.209, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 338.315, 338.330, 339.190, 429.015, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, and 516.098, RSMo, and to enact in lieu thereof thirty new sections relating to professional registration, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 2 333.171, 335.036, 335.200, 335.203, 335.206, 335.209, 338.010, 338.140, 338.150, 3 338.210, 338.220, 338.240, 338.315, 338.330, 339.190, 429.015, 436.405, 436.412, 4 436.445, 436.450, 436.455, 436.456, and 516.098, RSMo, are repealed and thirty 5 new sections enacted in lieu thereof, to be known as sections 324.014, 332.425, 6 333.041, 333.042, 333.051, 333.061, 333.091, 333.151, 333.171, 335.036, 335.099, 7 335.200, 335.203, 338.010, 338.140, 338.150, 338.210, 338.220, 338.240, 338.315, 8 338.330, 339.190, 429.015, 436.405, 436.412, 436.445, 436.450, 436.455, 436.456, 9 and 516.098, to read as follows:

**324.014. Any board, commission, committee, council, or office**  
2 **within the division of professional registration shall notify any known**  
3 **current employer of a change in a licensee's license and discipline**  
4 **status. An employer may provide a list of current licensed employees**  
5 **and make a request in writing to the board, commission, committee,**  
6 **council, or office within the division of professional registration**  
7 **responsible for the licensee's license, to be notified upon a change in**

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

8 the licensing status of any such licensed employee. Nothing in this  
9 section shall be construed as requiring the board, commission,  
10 committee, council, or office within the division of professional  
11 registration to determine the current employer of any person whose  
12 license is sanctioned.

332.425. 1. The dental board may issue a limited teaching license  
2 to a dentist employed as an instructor in an accredited dental school  
3 in Missouri. The holder of a limited teaching license shall be  
4 authorized to practice dentistry, in accordance with section 332.071,  
5 only within the confines of the accredited dental school programs. A  
6 limited teaching license shall be renewed every two years and shall be  
7 subject to the same renewal requirements contained in section 332.181.  
8 A limited teaching license shall be subject to discipline in accordance  
9 with section 332.321 and shall be automatically cancelled and nullified  
10 if the holder ceases to be employed as an instructor in the accredited  
11 dental school.

12 2. To qualify for a limited teaching license, an applicant shall:

13 (1) Be a graduate of and hold a degree from a dental school. An  
14 applicant shall not be required to be a graduate of an accredited dental  
15 school as defined in section 332.011;

16 (2) Have passed the National Board Examination in accordance  
17 with criteria established by the sponsoring body;

18 (3) Have passed a state or regional entry level competency  
19 examination approved by the Missouri dental board for licensure  
20 within the previous five years;

21 (4) Have passed a written jurisprudence examination given by  
22 the board on the Missouri dental laws and rules with a grade of at least  
23 eighty percent;

24 (5) Hold current certification in the American Heart  
25 Association's Basic Life Support (BLS), Advanced Cardiac Life Support  
26 (ACLS), or certification equivalent to BLS or ACLS;

27 (6) Submit to the board a completed application for licensure on  
28 forms provided by the board and the applicable license fee; and

29 (7) Submit to the board evidence of successful passage of an  
30 examination approved by the board of spoken and written proficiency  
31 in the English language.

333.041. 1. Each applicant for a license to practice funeral directing shall

2 furnish evidence to establish to the satisfaction of the board that he or she is:

3 (1) At least eighteen years of age, and possesses a high school diploma,  
4 **a general equivalency diploma**, or equivalent thereof, **as determined, at its**  
5 **discretion, by the board; and**

6 (2) [Either a citizen or a bona fide resident of the state of Missouri or  
7 entitled to a license pursuant to section 333.051, or a resident in a county  
8 contiguous and adjacent to the state of Missouri who is employed by a funeral  
9 establishment located within the state of Missouri, to practice funeral directing  
10 upon the grant of a license to do so; and

11 (3)] A person of good moral character.

12 2. Every person desiring to enter the profession of embalming dead human  
13 bodies within the state of Missouri and who is enrolled in [an] **a program**  
14 accredited [institution of mortuary science education] **by the American Board**  
15 **of Funeral Service Education, any successor organization, or other**  
16 **accrediting entity as approved by the board**, shall register with the board  
17 as a practicum student upon the form provided by the board. After such  
18 registration, a student may assist, under the direct supervision of Missouri  
19 licensed embalmers and funeral directors, in Missouri licensed funeral  
20 establishments, while serving his or her practicum [for the accredited institution  
21 of mortuary science education]. The form for registration as a practicum student  
22 shall be accompanied by a fee in an amount established by the board.

23 3. Each applicant for a license to practice embalming shall furnish  
24 evidence to establish to the satisfaction of the board that he or she:

25 (1) Is at least eighteen years of age, and possesses a high school diploma,  
26 **a general equivalency diploma**, or equivalent thereof, **as determined, at its**  
27 **discretion, by the board;**

28 (2) [Is either a citizen or bona fide resident of the state of Missouri or  
29 entitled to a license pursuant to section 333.051, or a resident in a county  
30 contiguous and adjacent to the state of Missouri who is employed by a funeral  
31 establishment located within the state of Missouri, to practice embalming upon  
32 the grant of a license to do so;

33 (3)] Is a person of good moral character;

34 [(4)] **(3)** Has [graduated from an institute of mortuary science education]  
35 **completed a funeral service education program** accredited by the American  
36 Board of Funeral Service Education, [or] any successor organization [recognized  
37 by the United States Department of Education, for funeral service education], **or**

38 **other accrediting entity as approved by the board.** If an applicant does  
39 not [appear for the final examination before the board] **complete all**  
40 **requirements for licensure** within five years from the date of his or her  
41 [graduation from] **completion of** an accredited [institution of mortuary science  
42 education] **program**, his or her registration as [a student] **an apprentice**  
43 **embalmer shall be automatically canceled. The applicant shall be required**  
44 **to file a new application and pay applicable fees. No previous**  
45 **apprenticeship shall be considered for the new application;**

46        [(5)] (4) Upon due examination administered by the board, is possessed  
47 of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology,  
48 mortuary administration, chemistry, restorative art, together with statutes, rules  
49 and regulations governing the care, custody, shelter and disposition of dead  
50 human bodies and the transportation thereof or has passed the national board  
51 examination of the Conference of Funeral Service Examining Boards. If any  
52 applicant fails to pass the state examination, he or she may retake the  
53 examination at the next regular examination meeting. The applicant shall notify  
54 the board office of his or her desire to retake the examination at least thirty days  
55 prior to the date of the examination. Each time the examination is retaken, the  
56 applicant shall pay a new examination fee in an amount established by the board;

57        [(6)] (5) Has been employed full time in funeral service in a licensed  
58 funeral establishment and has personally embalmed at least twenty-five dead  
59 human bodies under the personal supervision of an embalmer who holds a  
60 current and valid Missouri embalmer's license or an embalmer who holds a  
61 current and valid embalmer's license in a state with which the Missouri board  
62 has entered into a reciprocity agreement during an apprenticeship of not less  
63 than twelve consecutive months. "Personal supervision" means that the licensed  
64 embalmer shall be physically present during the entire embalming process in the  
65 first six months of the apprenticeship period and physically present at the  
66 beginning of the embalming process and available for consultation and personal  
67 inspection within a period of not more than one hour in the remaining six months  
68 of the apprenticeship period. All transcripts and other records filed with the  
69 board shall become a part of the board files.

70        4. If the applicant does not [appear for oral examination] **complete the**  
71 **application process** within the five years after his or her [graduation from an  
72 accredited institution of mortuary science education] **completion of an**  
73 **approved program**, then he or she must file a new application and no fees paid

74 previously shall apply toward the license fee.

75           5. Examinations required by this section and section 333.042 shall be held  
76 at least twice a year at times and places fixed by the board. The board shall by  
77 rule and regulation prescribe the standard for successful completion of the  
78 examinations.

79           6. Upon establishment of his or her qualifications as specified by this  
80 section or section 333.042, the board shall issue to the applicant a license to  
81 practice funeral directing or embalming, as the case may require, and shall  
82 register the applicant as a duly licensed funeral director or a duly licensed  
83 embalmer. Any person having the qualifications required by this section and  
84 section 333.042 may be granted both a license to practice funeral directing and  
85 to practice embalming.

86           7. The board shall, upon request, waive any requirement of this chapter  
87 and issue a temporary funeral director's license, valid for six months, to the  
88 surviving spouse or next of kin or the personal representative of a licensed  
89 funeral director, or to the spouse, next of kin, employee or conservator of a  
90 licensed funeral director disabled because of sickness, mental incapacity or injury.

          333.042. 1. Every person desiring to enter the profession of funeral  
2 directing in this state shall make application with the state board of embalmers  
3 and funeral directors and pay the current application and examination  
4 fees. **Except as otherwise provided in section 41.950**, applicants not  
5 entitled to a license pursuant to section 333.051 shall serve an apprenticeship for  
6 at least twelve **consecutive** months in a funeral establishment licensed for the  
7 care and preparation for burial and transportation of the human dead in this  
8 state or in another state which has established standards for admission to  
9 practice funeral directing equal to, or more stringent than, the requirements for  
10 admission to practice funeral directing in this state. The applicant shall devote  
11 at least fifteen hours per week to his or her duties as an apprentice under the  
12 supervision of a Missouri licensed funeral director. Such applicant shall submit  
13 proof to the board, on forms provided by the board, that the applicant has  
14 arranged and conducted ten funeral services during the applicant's  
15 apprenticeship under the supervision of a Missouri licensed funeral  
16 director. Upon completion of the apprenticeship, the applicant shall appear  
17 before the board to be tested on the applicant's legal and practical knowledge of  
18 funeral directing, funeral home licensing, preneed funeral contracts and the care,  
19 custody, shelter, disposition and transportation of dead human bodies. Upon

20 acceptance of the application and fees by the board, an applicant shall have  
21 twenty-four months to successfully complete the requirements for licensure found  
22 in this section or the application for licensure shall be canceled.

23         2. If a person applies for a limited license to work only in a funeral  
24 establishment which is licensed only for cremation, including transportation of  
25 dead human bodies to and from the funeral establishment, he or she shall make  
26 application, pay the current application and examination fee and successfully  
27 complete the Missouri law examination. He or she shall be exempt from the  
28 twelve-month apprenticeship **required by subsection 1 of this section** and  
29 the practical examination before the board. If a person has a limited license  
30 issued pursuant to this subsection, he or she may obtain a full funeral director's  
31 license if he or she fulfills the apprenticeship and successfully completes the  
32 funeral director practical examination.

33         3. If an individual is a Missouri licensed embalmer or has [graduated  
34 from an institute of mortuary science education] **completed a program**  
35 accredited by the American Board of Funeral Service Education [or], any  
36 successor organization [recognized by the United States Department of Education  
37 for funeral service education], **or other accrediting entity as approved by**  
38 **the board** or has successfully completed a course of study in funeral directing  
39 offered by [a college] **an institution** accredited by a recognized national, regional  
40 or state accrediting body and approved by the state board of embalmers and  
41 funeral directors, and desires to enter the profession of funeral directing in this  
42 state, the individual shall comply with all the requirements for licensure as a  
43 funeral director pursuant to subsection 1 of section 333.041 and subsection 1 of  
44 this section; however, the individual is exempt from the twelve-month  
45 apprenticeship required by subsection 1 of this section.

333.051. 1. Any [nonresident] individual holding a valid, unrevoked and  
2 unexpired license as a funeral director or embalmer in the state of his **or her**  
3 residence may be granted a license to practice funeral directing or embalming in  
4 this state on application to the board and on providing the board with such  
5 evidence as to his **or her** qualifications as is required by the board. [No license  
6 shall be granted to a nonresident applicant except one who resides in a county  
7 contiguous and adjacent to the state of Missouri and who is regularly engaged in  
8 the practice of funeral directing or embalming, as defined by this chapter, at  
9 funeral establishments within this state or in an establishment located in a  
10 county contiguous and adjacent to the state of Missouri, unless the law of the

11 state of the applicant's residence authorizes the granting of licenses to practice  
12 funeral directing in such state to persons licensed as funeral directors under the  
13 law of the state of Missouri.]

14         2. Any individual holding a valid, unrevoked and unexpired license as an  
15 embalmer or funeral director in another state having requirements substantially  
16 similar to those existing in this state [who is or intends to become a resident of  
17 this state] may apply for a license to practice in this state by filing with the board  
18 a certified statement from the examining board of the state or territory in which  
19 the applicant holds his **or her** license showing the grade rating upon which [his]  
20 **the** license was granted, together with a recommendation, and the board shall  
21 grant the applicant a license upon his **or her** successful completion of an  
22 examination over Missouri laws as required in section 333.041 or section 333.042  
23 if the board finds that the applicant's qualifications meet the requirements for  
24 funeral directors or embalmers in this state at the time the applicant was  
25 originally licensed in the other state.

26         3. A person holding a valid, unrevoked and unexpired license to practice  
27 funeral directing or embalming in another state or territory with requirements  
28 less than those of this state may, after five consecutive years of active experience  
29 as a licensed funeral director or embalmer in that state, apply for a license to  
30 practice in this state after passing a test to prove his **or her** proficiency,  
31 including but not limited to a knowledge of the laws and regulations of this state  
32 as to funeral directing and embalming.

333.061. 1. No funeral establishment shall be operated in this state  
2 unless the owner or operator thereof has a license issued by the board.

3         2. A license for the operation of a funeral establishment shall be issued  
4 by the board, if the board finds:

5             (1) That the establishment is under the general management and the  
6 supervision of a duly licensed funeral director;

7             (2) That all embalming performed therein is performed by or under the  
8 direct supervision of a duly licensed embalmer;

9             (3) That any place in the funeral establishment where embalming is  
10 conducted contains a preparation room with a sanitary floor, walls and ceiling,  
11 and adequate sanitary drainage and disposal facilities including running water,  
12 and complies with the sanitary standard prescribed by the department of health  
13 and senior services for the prevention of the spread of contagious, infectious or  
14 communicable diseases;

15 (4) Each funeral establishment shall have [available in the preparation  
16 or embalming room] a register book or log which shall be available at all times  
17 [in full view] for the board's inspector and [the name of each body embalmed,  
18 place, if other than at the establishment, the date and time that the embalming  
19 took place, the name and signature of the embalmer and the embalmer's license  
20 number shall be noted in the book] **that shall contain:**

21 (a) **The name of each body that has been in the establishment;**

22 (b) **The date the body arrived at the establishment;**

23 (c) **If applicable, the place of embalming, if known; and**

24 (d) **If the body was embalmed at the establishment, the date and  
25 time that the embalming took place, and the name, signature, and  
26 license number of the embalmer; and**

27 (5) The establishment complies with all applicable state, county or  
28 municipal zoning ordinances and regulations.

29 3. The board shall grant or deny each application for a license pursuant  
30 to this section within thirty days after it is filed. The applicant may request in  
31 writing up to two thirty-day extensions of the application, provided the request  
32 for an extension is received by the board prior to the expiration of the thirty-day  
33 application or extension period.

34 4. Licenses shall be issued pursuant to this section upon application and  
35 the payment of a funeral establishment fee and shall be renewed at the end of the  
36 licensing period on the establishment's renewal date.

37 5. The board may refuse to renew or may suspend or revoke any license  
38 issued pursuant to this section if it finds, after hearing, that the funeral  
39 establishment does not meet any of the requirements set forth in this section as  
40 conditions for the issuance of a license, or for the violation by the owner of the  
41 funeral establishment of any of the provisions of section 333.121. No new license  
42 shall be issued to the owner of a funeral establishment or to any corporation  
43 controlled by such owner for three years after the revocation of the license of the  
44 owner or of a corporation controlled by the owner. Before any action is taken  
45 pursuant to this subsection the procedure for notice and hearing as prescribed by  
46 section 333.121 shall be followed.

333.091. [Each establishment, funeral director or embalmer receiving a  
2 license under this chapter shall have recorded in the office of the local registrar  
3 of vital statistics of the registration district in which the licensee practices.] All  
4 licenses or registrations, or duplicates thereof, issued pursuant to this chapter

5 shall be displayed at each place of business.

333.151. 1. The state board of embalmers and funeral directors shall  
2 consist of [ten] **six** members, including one voting public member appointed by  
3 the governor with the advice and consent of the senate. Each member, other than  
4 the public member, appointed shall possess either a license to practice embalming  
5 or a license to practice funeral directing in this state or both said licenses and  
6 shall have been actively engaged in the practice of embalming or funeral directing  
7 for a period of five years next before his or her appointment. Each member shall  
8 be a United States citizen, a resident of this state for a period of at least one  
9 year, a qualified voter of this state and shall be of good moral character. Not  
10 more than [five] **three** members of the board shall be of the same political  
11 party. The nonpublic members shall be appointed by the governor, with the  
12 advice and consent of the senate[, one from each of the state's congressional  
13 districts be of good moral character and submit an audited financial statement  
14 of their funeral establishment by an independent auditor for the previous five  
15 years. This audited financial statement must include all at-need and preneed  
16 business]. **A majority of the members shall constitute a**  
17 **quorum. Members shall be appointed to represent diversity in gender,**  
18 **race, ethnicity, and the various geographic regions of the state.**

19 2. Each member of the board shall serve for a term of five years. Any  
20 vacancy on the board shall be filled by the governor and the person appointed to  
21 fill the vacancy shall possess the qualifications required by this chapter and shall  
22 serve until the end of the unexpired term of his or her predecessor, if any.

23 3. The public member shall be at the time of his or her appointment a  
24 person who is not and never was a member of any profession licensed or regulated  
25 pursuant to this chapter or the spouse of such person; and a person who does not  
26 have and never has had a material, financial interest in either the providing of  
27 the professional services regulated by this chapter, or an activity or organization  
28 directly related to any profession licensed or regulated pursuant to this chapter.  
29 All members, including public members, shall be chosen from lists submitted by  
30 the director of the division of professional registration. The duties of the public  
31 member shall not include the determination of the technical requirements to be  
32 met for licensure or whether any person meets such technical requirements or of  
33 the technical competence or technical judgment of a licensee or a candidate for  
34 licensure.

333.171. The board shall hold at least two regular meetings each year for

2 the purpose of administering examinations at times and places fixed by the  
3 board. Other meetings shall be held at the times fixed by regulations of the  
4 board or on the call of the chairman of the board. Notice of the time and place  
5 of each regular or special meeting shall be mailed by the executive secretary to  
6 each member of the board at least five days before the date of the meeting. [At  
7 all meetings of the board three members constitute a quorum.] The board may  
8 adopt and use a common seal.

335.036. 1. The board shall:

2 (1) Elect for a one-year term a president and a secretary, who shall also  
3 be treasurer, and the board may appoint, employ and fix the compensation of a  
4 legal counsel and such board personnel as defined in subdivision (4) of subsection  
5 10 of section 324.001 as are necessary to administer the provisions of sections  
6 335.011 to 335.096;

7 (2) Adopt and revise such rules and regulations as may be necessary to  
8 enable it to carry into effect the provisions of sections 335.011 to 335.096;

9 (3) Prescribe minimum standards for educational programs preparing  
10 persons for licensure pursuant to the provisions of sections 335.011 to 335.096;

11 (4) Provide for surveys of such programs every five years and in addition  
12 at such times as it may deem necessary;

13 (5) Designate as "approved" such programs as meet the requirements of  
14 sections 335.011 to 335.096 and the rules and regulations enacted pursuant to  
15 such sections; and the board shall annually publish a list of such programs;

16 (6) Deny or withdraw approval from educational programs for failure to  
17 meet prescribed minimum standards;

18 (7) Examine, license, and cause to be renewed the licenses of duly  
19 qualified applicants;

20 (8) Cause the prosecution of all persons violating provisions of sections  
21 335.011 to 335.096, and may incur such necessary expenses therefor;

22 (9) Keep a record of all the proceedings; and make an annual report to the  
23 governor and to the director of the department of insurance, financial institutions  
24 and professional registration;

25 (10) Establish an impaired nurse program.

26 2. The board shall set the amount of the fees which this chapter  
27 authorizes and requires by rules and regulations. The fees shall be set at a level  
28 to produce revenue which shall not substantially exceed the cost and expense of  
29 administering this chapter.

30           3. All fees received by the board pursuant to the provisions of sections  
31 335.011 to 335.096 shall be deposited in the state treasury and be placed to the  
32 credit of the state board of nursing fund. All administrative costs and expenses  
33 of the board shall be paid from appropriations made for those purposes. **The**  
34 **board is authorized to provide funding for the nursing education**  
35 **incentive program established in sections 335.200 to 335.203.**

36           4. The provisions of section 33.080 to the contrary notwithstanding, money  
37 in this fund shall not be transferred and placed to the credit of general revenue  
38 until the amount in the fund at the end of the biennium exceeds two times the  
39 amount of the appropriation from the board's funds for the preceding fiscal year  
40 or, if the board requires by rule, permit renewal less frequently than yearly, then  
41 three times the appropriation from the board's funds for the preceding fiscal  
42 year. The amount, if any, in the fund which shall lapse is that amount in the  
43 fund which exceeds the appropriate multiple of the appropriations from the  
44 board's funds for the preceding fiscal year.

45           5. Any rule or portion of a rule, as that term is defined in section 536.010,  
46 that is created under the authority delegated in this chapter shall become  
47 effective only if it complies with and is subject to all of the provisions of chapter  
48 536 and, if applicable, section 536.028. All rulemaking authority delegated prior  
49 to August 28, 1999, is of no force and effect and repealed. Nothing in this section  
50 shall be interpreted to repeal or affect the validity of any rule filed or adopted  
51 prior to August 28, 1999, if it fully complied with all applicable provisions of  
52 law. This section and chapter 536 are nonseverable and if any of the powers  
53 vested with the general assembly pursuant to chapter 536 to review, to delay the  
54 effective date or to disapprove and annul a rule are subsequently held  
55 unconstitutional, then the grant of rulemaking authority and any rule proposed  
56 or adopted after August 28, 1999, shall be invalid and void.

**335.099. Any licensed practical nurse, as defined in section**  
2 **335.016:**

3           **(1) Who is an approved instructor for the level 1 medication aid**  
4 **program shall be qualified to teach the insulin administration course**  
5 **under chapter 198;**

6           **(2) Shall be qualified to perform diabetic nail care and monthly**  
7 **onsite reviews of basic personal care recipients, as required by the**  
8 **department of social services, of a resident of a residential care facility**  
9 **or assisted living facility, as defined in chapter 198;**

10           **(3) Shall be qualified to perform dietary oversight, as required**  
11 **by the department of health and senior services, of a resident of a**  
12 **residential care facility or assisted living facility, as defined in chapter**  
13 **198.**

          335.200. As used in sections 335.200 to [335.209] **335.203**, the following  
2 terms mean:

3           (1) "Board", the [Missouri coordinating board for higher education] **state**  
4 **board of nursing;**

5           (2) "**Department**", the **Missouri department of higher education;**

6           (3) "**Eligible [nursing program] institution of higher education**", a  
7 **Missouri institution of higher education accredited by the higher**  
8 **learning commission of the north central association which offers a**  
9 nursing education program [accredited under this chapter];

10          [(3) "Fund", the nurse training incentive fund, established in section  
11 335.203;]

12          (4) "[Incentive] Grant", a grant awarded to [a nurse education program]  
13 **an eligible institution of higher education** under the guidelines set forth in  
14 sections **335.200 to 335.203** [to 335.209;]

15          (5) "Nontraditional student", a person admitted to an eligible nursing  
16 program that is older than twenty-two years of age at the time he is admitted to  
17 the nursing program;

18          (6) "Nurse", a person holding a license as a registered nurse, pursuant to  
19 this chapter; and

20          (7) "Professional nursing education program", a program of education  
21 accredited by the state board of nursing, pursuant to this chapter, designed to  
22 prepare persons for licensure as registered professional nurses with an  
23 enrollment of no less than sixty-five percent of the enrollment approved by the  
24 state board of nursing].

          335.203. [The "Nurse Training Incentive Fund" is hereby established in  
2 the state treasury. The fund shall be administered by the coordinating board for  
3 higher education. The board shall base its appropriation request on enrollment,  
4 graduation and licensure figures for the previous year. The board may accept  
5 funds from private, federal and other sources for the purposes of sections 335.200  
6 to 335.209. All appropriations, private donations, and other funds provided to the  
7 board for the implementation of sections 335.200 to 335.209 shall be placed in the  
8 nurse training incentive fund. Notwithstanding the provisions of section 33.080

9 to the contrary, funds in the nurse training incentive fund shall not revert to the  
10 general revenue fund. Interest accruing to the fund shall be part of the fund.  
11 Grants provided pursuant to section 335.206 shall be made within the amounts  
12 appropriated therefor.] **1. There is hereby established the "Nursing**  
13 **Education Incentive Program" within the department of higher**  
14 **education.**

15 **2. Subject to appropriation, grants shall be awarded through the**  
16 **nursing education incentive program to eligible institutions of higher**  
17 **education based on criteria jointly determined by the board and the**  
18 **department. Grant award amounts shall not exceed one hundred fifty**  
19 **thousand dollars. No campus shall receive more than one grant per**  
20 **year.**

21 **3. To be considered for a grant, an eligible institution of higher**  
22 **education shall offer a program of nursing that meets the**  
23 **predetermined category and area of need as established by the board**  
24 **and the department under subsection 4 of this section.**

25 **4. The board and the department shall determine categories and**  
26 **areas of need for designating grants to eligible institutions of higher**  
27 **education. In establishing categories and areas of need, the board and**  
28 **department may consider criteria including, but not limited to:**

29 **(1) Data generated from licensure renewal data and the**  
30 **department of health and senior services; and**

31 **(2) National nursing statistical data and trends that have**  
32 **identified nursing shortages.**

33 **5. The department shall be the administrative agency responsible**  
34 **for implementation of the program established under sections 335.200**  
35 **to 335.203, and shall promulgate reasonable rules for the exercise of its**  
36 **functions and the effectuation of the purposes of sections 335.200 to**  
37 **335.203. The department shall, by rule, prescribe the form, time, and**  
38 **method of filing applications and shall supervise the processing of such**  
39 **applications.**

40 **6. Any rule or portion of a rule, as that term is defined in section**  
41 **536.010, that is created under the authority delegated in this section**  
42 **shall become effective only if it complies with and is subject to all of**  
43 **the provisions of chapter 536 and, if applicable, section 536.028. This**  
44 **section and chapter 536 are nonseverable and if any of the powers**  
45 **vested with the general assembly pursuant to chapter 536 to review, to**

46 **delay the effective date, or to disapprove and annul a rule are**  
47 **subsequently held unconstitutional, then the grant of rulemaking**  
48 **authority and any rule proposed or adopted after August 28, 2011, shall**  
49 **be invalid and void.**

338.010. 1. The "practice of pharmacy" means the interpretation,  
2 implementation, and evaluation of medical prescription orders, including **any**  
3 **legend drugs under 21 U.S.C. Section 353**; receipt, transmission, or handling  
4 of such orders or facilitating the dispensing of such orders; the designing,  
5 initiating, implementing, and monitoring of a medication therapeutic plan as  
6 defined by the prescription order so long as the prescription order is specific to  
7 each patient for care by a pharmacist; the compounding, dispensing, labeling, and  
8 administration of drugs and devices pursuant to medical prescription orders and  
9 administration of viral influenza, pneumonia, shingles and meningitis vaccines  
10 by written protocol authorized by a physician for persons twelve years of age or  
11 older as authorized by rule or the administration of pneumonia, shingles, and  
12 meningitis vaccines by written protocol authorized by a physician for a specific  
13 patient as authorized by rule; the participation in drug selection according to  
14 state law and participation in drug utilization reviews; the proper and safe  
15 storage of drugs and devices and the maintenance of proper records thereof;  
16 consultation with patients and other health care practitioners, **and**  
17 **veterinarians and their clients about legend drugs**, about the safe and  
18 effective use of drugs and devices; and the offering or performing of those acts,  
19 services, operations, or transactions necessary in the conduct, operation,  
20 management and control of a pharmacy. No person shall engage in the practice  
21 of pharmacy unless he is licensed under the provisions of this chapter. This  
22 chapter shall not be construed to prohibit the use of auxiliary personnel under  
23 the direct supervision of a pharmacist from assisting the pharmacist in any of his  
24 **or her** duties. This assistance in no way is intended to relieve the pharmacist  
25 from his **or her** responsibilities for compliance with this chapter and he **or she**  
26 will be responsible for the actions of the auxiliary personnel acting in his **or her**  
27 assistance. This chapter shall also not be construed to prohibit or interfere with  
28 any legally registered practitioner of medicine, dentistry, **or** podiatry, or  
29 veterinary medicine **only for use in animals**, or the practice of optometry in  
30 accordance with and as provided in sections 195.070 and 336.220 in the  
31 compounding, **administering, prescribing**, or dispensing of his **or her** own  
32 prescriptions.

33           2. Any pharmacist who accepts a prescription order for a medication  
34 therapeutic plan shall have a written protocol from the physician who refers the  
35 patient for medication therapy services. The written protocol and the prescription  
36 order for a medication therapeutic plan shall come from the physician only, and  
37 shall not come from a nurse engaged in a collaborative practice arrangement  
38 under section 334.104, or from a physician assistant engaged in a supervision  
39 agreement under section 334.735.

40           3. Nothing in this section shall be construed as to prevent any person,  
41 firm or corporation from owning a pharmacy regulated by sections 338.210 to  
42 338.315, provided that a licensed pharmacist is in charge of such pharmacy.

43           4. Nothing in this section shall be construed to apply to or interfere with  
44 the sale of nonprescription drugs and the ordinary household remedies and such  
45 drugs or medicines as are normally sold by those engaged in the sale of general  
46 merchandise.

47           5. No health carrier as defined in chapter 376 shall require any physician  
48 with which they contract to enter into a written protocol with a pharmacist for  
49 medication therapeutic services.

50           6. This section shall not be construed to allow a pharmacist to diagnose  
51 or independently prescribe pharmaceuticals.

52           7. The state board of registration for the healing arts, under section  
53 334.125, and the state board of pharmacy, under section 338.140, shall jointly  
54 promulgate rules regulating the use of protocols for prescription orders for  
55 medication therapy services and administration of viral influenza vaccines. Such  
56 rules shall require protocols to include provisions allowing for timely  
57 communication between the pharmacist and the referring physician, and any  
58 other patient protection provisions deemed appropriate by both boards. In order  
59 to take effect, such rules shall be approved by a majority vote of a quorum of each  
60 board. Neither board shall separately promulgate rules regulating the use of  
61 protocols for prescription orders for medication therapy services and  
62 administration of viral influenza vaccines. Any rule or portion of a rule, as that  
63 term is defined in section 536.010, that is created under the authority delegated  
64 in this section shall become effective only if it complies with and is subject to all  
65 of the provisions of chapter 536 and, if applicable, section 536.028. This section  
66 and chapter 536 are nonseverable and if any of the powers vested with the  
67 general assembly pursuant to chapter 536 to review, to delay the effective date,  
68 or to disapprove and annul a rule are subsequently held unconstitutional, then

69 the grant of rulemaking authority and any rule proposed or adopted after August  
70 28, 2007, shall be invalid and void.

71 8. The state board of pharmacy may grant a certificate of medication  
72 therapeutic plan authority to a licensed pharmacist who submits proof of  
73 successful completion of a board-approved course of academic clinical study  
74 beyond a bachelor of science in pharmacy, including but not limited to clinical  
75 assessment skills, from a nationally accredited college or university, or a  
76 certification of equivalence issued by a nationally recognized professional  
77 organization and approved by the board of pharmacy.

78 9. Any pharmacist who has received a certificate of medication therapeutic  
79 plan authority may engage in the designing, initiating, implementing, and  
80 monitoring of a medication therapeutic plan as defined by a prescription order  
81 from a physician that is specific to each patient for care by a pharmacist.

82 10. Nothing in this section shall be construed to allow a pharmacist to  
83 make a therapeutic substitution of a pharmaceutical prescribed by a physician  
84 unless authorized by the written protocol or the physician's prescription order.

85 **11. "Veterinarian", "doctor of veterinary medicine", "practitioner**  
86 **of veterinary medicine", "DVM", "VMD", "BVSe", "BVMS", "BSe (Vet**  
87 **Science)", "VMB", "MRCVS", or an equivalent title means a person who**  
88 **has received a doctor's degree in veterinary medicine from an**  
89 **accredited school of veterinary medicine or holds an Educational**  
90 **Commission for Foreign Veterinary Graduates (EDFVG) certificate**  
91 **issued by the American Veterinary Medical Association (AVMA).**

338.140. 1. The board of pharmacy shall have a common seal, and shall  
2 have power to adopt such rules and bylaws not inconsistent with law as may be  
3 necessary for the regulation of its proceedings and for the discharge of the duties  
4 imposed pursuant to sections 338.010 to 338.198, and shall have power to employ  
5 an attorney to conduct prosecutions or to assist in the conduct of prosecutions  
6 pursuant to sections 338.010 to 338.198.

7 2. The board shall keep a record of its proceedings.

8 3. The board of pharmacy shall make annually to the governor and, upon  
9 written request, to persons licensed pursuant to the provisions of this chapter a  
10 written report of its proceedings.

11 4. The board of pharmacy shall appoint an advisory committee composed  
12 of [five] **six** members, one of whom shall be a representative of pharmacy but who  
13 shall not be a member of the pharmacy board, three of whom shall be

14 representatives of wholesale drug distributors as defined in section 338.330, [and]  
15 one of whom shall be a representative of drug manufacturers, **and one of whom**  
16 **shall be a licensed veterinarian recommended to the board of pharmacy**  
17 **by the board of veterinary medicine.** The committee shall review and make  
18 recommendations to the board on the merit of all rules and regulations dealing  
19 with pharmacy distributors, wholesale drug distributors [and], drug  
20 manufacturers, **and veterinary legend drugs** which are proposed by the board.

21 5. A majority of the board shall constitute a quorum for the transaction  
22 of business.

23 6. Notwithstanding any other provisions of law to the contrary, the board  
24 may issue letters of reprimand, censure or warning to any holder of a license or  
25 registration required pursuant to this chapter for any violations that could result  
26 in disciplinary action as defined in section 338.055.

338.150. Any person authorized by the board of pharmacy is hereby given  
2 the right of entry and inspection upon all open premises purporting or appearing  
3 to be drug or chemical stores, apothecary shops, pharmacies or places of business  
4 for exposing for sale, or the dispensing or selling of drugs, pharmaceuticals,  
5 medicines, chemicals or poisons or for the compounding of physicians' **or**  
6 **veterinarians'** prescriptions.

338.210. 1. Pharmacy refers to any location where the practice of  
2 pharmacy occurs or such activities are offered or provided by a pharmacist or  
3 another acting under the supervision and authority of a pharmacist, including  
4 every premises or other place:

5 (1) Where the practice of pharmacy is offered or conducted;

6 (2) Where drugs, chemicals, medicines, **any legend drugs under 21**  
7 **U.S.C. Section 353**, prescriptions, or poisons are compounded, prepared,  
8 dispensed or sold or offered for sale at retail;

9 (3) Where the words "pharmacist", "apothecary", "drugstore", "drugs", and  
10 any other symbols, words or phrases of similar meaning or understanding are  
11 used in any form to advertise retail products or services;

12 (4) Where patient records or other information is maintained for the  
13 purpose of engaging or offering to engage in the practice of pharmacy or to comply  
14 with any relevant laws regulating the acquisition, possession, handling, transfer,  
15 sale or destruction of drugs, chemicals, medicines, prescriptions or poisons.

16 2. All activity or conduct involving the practice of pharmacy as it relates  
17 to an identifiable prescription or drug order shall occur at the pharmacy location

18 where such identifiable prescription or drug order is first presented by the  
19 patient or the patient's authorized agent for preparation or dispensing, unless  
20 otherwise expressly authorized by the board.

21 3. The requirements set forth in subsection 2 of this section shall not be  
22 construed to bar the complete transfer of an identifiable prescription or drug  
23 order pursuant to a verbal request by or the written consent of the patient or the  
24 patient's authorized agent.

25 4. The board is hereby authorized to enact rules waiving the requirements  
26 of subsection 2 of this section and establishing such terms and conditions as it  
27 deems necessary, whereby any activities related to the preparation, dispensing  
28 or recording of an identifiable prescription or drug order may be shared between  
29 separately licensed facilities.

30 5. If a violation of this chapter or other relevant law occurs in connection  
31 with or adjunct to the preparation or dispensing of a prescription or drug order,  
32 any permit holder or pharmacist-in-charge at any facility participating in the  
33 preparation, dispensing, or distribution of a prescription or drug order may be  
34 deemed liable for such violation.

35 6. Nothing in this section shall be construed to supersede the provisions  
36 of section 197.100.

338.220. 1. It shall be unlawful for any person, copartnership,  
2 association, corporation or any other business entity to open, establish, operate,  
3 or maintain any pharmacy as defined by statute without first obtaining a permit  
4 or license to do so from the Missouri board of pharmacy. A permit shall not be  
5 required for an individual licensed pharmacist to perform nondispensing activities  
6 outside of a pharmacy, as provided by the rules of the board. A permit shall not  
7 be required for an individual licensed pharmacist to administer drugs, vaccines,  
8 and biologicals by protocol, as permitted by law, outside of a pharmacy. The  
9 following classes of pharmacy permits or licenses are hereby established:

- 10 (1) Class A: Community/ambulatory;
- 11 (2) Class B: Hospital outpatient pharmacy;
- 12 (3) Class C: Long-term care;
- 13 (4) Class D: Nonsterile compounding;
- 14 (5) Class E: Radio pharmaceutical;
- 15 (6) Class F: Renal dialysis;
- 16 (7) Class G: Medical gas;
- 17 (8) Class H: Sterile product compounding;

- 18 (9) Class I: Consultant services;  
19 (10) Class J: Shared service;  
20 (11) Class K: Internet;  
21 (12) Class L: Veterinary.

22 2. Application for such permit or license shall be made upon a form  
23 furnished to the applicant; shall contain a statement that it is made under oath  
24 or affirmation and that its representations are true and correct to the best  
25 knowledge and belief of the person signing same, subject to the penalties of  
26 making a false affidavit or declaration; and shall be accompanied by a permit or  
27 license fee. The permit or license issued shall be renewable upon payment of a  
28 renewal fee. Separate applications shall be made and separate permits or  
29 licenses required for each pharmacy opened, established, operated, or maintained  
30 by the same owner.

31 3. All permits, licenses or renewal fees collected pursuant to the  
32 provisions of sections 338.210 to 338.370 shall be deposited in the state treasury  
33 to the credit of the Missouri board of pharmacy fund, to be used by the Missouri  
34 board of pharmacy in the enforcement of the provisions of sections 338.210 to  
35 338.370, when appropriated for that purpose by the general assembly.

36 4. Class L: veterinary permit shall not be construed to prohibit or  
37 interfere with any legally registered practitioner of veterinary medicine in the  
38 compounding, **administering, prescribing,** or dispensing of their own  
39 prescriptions, **or medicine, drug, or pharmaceutical product to be used**  
40 **for animals.**

41 5. [Notwithstanding any other law to the contrary] **Except for any**  
42 **legend drugs under 21 U.S.C. Section 353,** the provisions of this section shall  
43 not apply to the sale, dispensing, or filling of a pharmaceutical product or drug  
44 used for treating animals.

338.240. 1. Upon evidence satisfactory to the said Missouri board of  
2 pharmacy:

3 (1) That the pharmacy for which a permit, or renewal thereof, is sought,  
4 will be conducted in full compliance with sections 338.210 to 338.300, with  
5 existing laws, and with the rules and regulations as established hereunder by  
6 said board;

7 (2) That the equipment and facilities of such pharmacy are such that it  
8 can be operated in a manner not to endanger the public health or safety;

9 (3) That such pharmacy is equipped with proper pharmaceutical and

10 sanitary appliances and kept in a clean, sanitary and orderly manner;

11 (4) That the management of said pharmacy is under the supervision of  
12 either a registered pharmacist, or an owner or employee of the owner, who has  
13 at his **or her** place of business a registered pharmacist employed for the purpose  
14 of compounding physician's **or veterinarian's** prescriptions in the event any  
15 such prescriptions are compounded or sold;

16 (5) That said pharmacy is operated in compliance with the rules and  
17 regulations legally prescribed with respect thereto by the Missouri board of  
18 pharmacy, a permit or renewal thereof shall be issued to such persons as the said  
19 board of pharmacy shall deem qualified to conduct such pharmacy.

20 **2. In lieu of a registered pharmacist as required by subdivision**  
21 **(4) of subsection 1 of this section, a pharmacy permit holder that only**  
22 **holds a class L veterinary permit and no other pharmacy permit, may**  
23 **designate a supervising registered pharmacist who shall be responsible**  
24 **for reviewing the activities and records of the class L pharmacy permit**  
25 **holder as established by the board by rule. The supervising registered**  
26 **pharmacist shall not be required to be physically present on site during**  
27 **the business operations of a class L pharmacy permit holder identified**  
28 **in subdivision (5) of subsection 1 of this section when noncontrolled**  
29 **legend drugs under 21 U.S.C. Section 353 are being dispensed for use**  
30 **in animals, but shall be specifically present on site when any**  
31 **noncontrolled drugs for use in animals are being compounded.**

338.315. It shall be unlawful for any pharmacist, pharmacy owner or  
2 person employed by a pharmacy to knowingly purchase or receive any legend  
3 drugs **under 21 U.S.C. Section 353** from other than a licensed or registered  
4 drug distributor or licensed pharmacy. Any person who violates the provisions  
5 of this section shall, upon conviction, be adjudged guilty of a class A  
6 misdemeanor. Any subsequent conviction shall constitute a class D felony.

338.330. As used in sections 338.300 to 338.370, the following terms  
2 mean:

3 (1) "Out-of-state wholesale drug distributor", a wholesale drug distributor  
4 with no physical facilities located in the state;

5 (2) "Pharmacy distributor", any licensed pharmacy, as defined in section  
6 338.210, engaged in the delivery or distribution of legend drugs to any other  
7 licensed pharmacy where such delivery or distribution constitutes at least five  
8 percent of the total gross sales of such pharmacy;

9 (3) **"Legend drug":**

10 (a) **Any drug or biological product:**

11 a. **Subject to Section 503(b) of the Federal Food, Drug and**  
12 **Cosmetic Act, including finished dosage forms and active ingredients**  
13 **subject to such section;**

14 b. **Required under federal law to be labeled with one of the**  
15 **following statements prior to being dispensed or delivered:**

16 (i) **"Caution: Federal law prohibits dispensing without**  
17 **prescription";**

18 (ii) **"Caution: Federal law restricts this drug to use by or on the**  
19 **order of a licensed veterinarian"; or**

20 (iii) **"Rx only";**

21 c. **Required by any applicable federal or state law or regulation**  
22 **to be dispensed by prescription only or that is restricted to use or**  
23 **dispensed by practitioners only;**

24 (b) **The term "drug", "prescription drug", or "legend drug" shall**  
25 **not include:**

26 a. **An investigational new drug, as defined in 21 CFR 312.3(b),**  
27 **that is being utilized for the purposes of conducting a clinical trial or**  
28 **investigation of such drug or product that is governed by and being**  
29 **conducted under 21 CFR 312, et seq.;**

30 b. **Any drug product being utilized for the purposes of**  
31 **conducting a clinical trial or investigation that is governed by and**  
32 **being conducted under 21 CFR 312, et seq.;**

33 c. **Any drug product being utilized for the purposes of**  
34 **conducting a clinical trial or investigation that is governed or approved**  
35 **by an institutional review board subject to 21 CFR Part 56 or 45 CFR**  
36 **Part 46;**

37 (4) **"Wholesale drug distributor", anyone engaged in the delivery or**  
38 **distribution of legend drugs from any location and who is involved in the actual,**  
39 **constructive or attempted transfer of a drug or drug-related device in this state,**  
40 **other than to the ultimate consumer. This shall include, but not be limited to,**  
41 **drug wholesalers, repackagers and manufacturers which are engaged in the**  
42 **delivery or distribution of drugs in this state, with facilities located in this state**  
43 **or in any other state or jurisdiction. A wholesale drug distributor shall not**  
44 **include any common carrier or individual hired solely to transport legend**  
45 **drugs. Any locations where drugs are delivered on a consignment basis, as**

46 defined by the board, shall be exempt from licensure as a drug distributor, and  
47 those standards of practice required of a drug distributor but shall be open for  
48 inspection by board of pharmacy representatives as provided for in section  
49 338.360.

339.190. 1. A real estate licensee shall be immune from liability for  
2 statements made by engineers, land surveyors, geologists, environmental hazard  
3 experts, wood-destroying inspection and control experts, termite inspectors,  
4 mortgage brokers, home inspectors, or other home inspection experts unless:

5 (1) The statement was made by a person employed by the licensee or the  
6 broker with whom the licensee is associated;

7 (2) The person making the statement was selected by and engaged by the  
8 licensee. **For purposes of this section, the ordering of a report or  
9 inspection alone shall not constitute selecting or engaging a person;** or

10 (3) The licensee knew prior to closing that the statement was false or the  
11 licensee acted in reckless disregard as to whether the statement was true or false.

12 2. A real estate licensee shall not be the subject of any action and no  
13 action shall be instituted against a real estate licensee for any information  
14 contained in a seller's disclosure for residential, commercial, industrial, farm, or  
15 vacant real estate furnished to a buyer, unless the real estate licensee is a  
16 signatory to such or the licensee knew prior to closing that the statement was  
17 false or the licensee acted in reckless disregard as to whether the statement was  
18 true or false.

19 3. A real estate licensee acting as a courier of documents referenced in  
20 this section shall not be considered to be making the statements contained in  
21 such documents.

429.015. 1. Every registered architect or corporation registered to practice  
2 architecture, every registered professional engineer or corporation registered to  
3 practice professional engineering, every registered landscape architect or  
4 corporation registered to practice landscape architecture, and every registered  
5 land surveyor or corporation registered to practice land surveying, who does any  
6 landscape architectural, architectural, engineering or land surveying work upon  
7 or performs any landscape architectural, architectural, engineering or land  
8 surveying service directly connected with the erection or repair of any building  
9 or other improvement upon land under or by virtue of any contract with the  
10 owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or  
11 subcontractor, or without a contract if ordered by a city, town, village or county

12 having a charter form of government to abate the conditions that caused a  
13 structure on that property to be deemed a dangerous building under local  
14 ordinances pursuant to section 67.410, upon complying with the provisions of this  
15 chapter, shall have for such person's landscape architectural, architectural,  
16 engineering or land surveying work or service so done or performed, a lien upon  
17 the building or other improvements and upon the land belonging to the owner or  
18 lessee on which the building or improvements are situated, to the extent of [one  
19 acre] **three acres**. If the building or other improvement is upon any lot of land  
20 in any town, city or village, then the lien shall be upon such building or other  
21 improvements, and the lot or land upon which the building or other  
22 improvements are situated, to secure the payment for the landscape architectural,  
23 architectural, engineering or land surveying work or service so done or  
24 performed. For purposes of this section, a corporation engaged in the practice of  
25 architecture, engineering, landscape architecture, or land surveying, shall be  
26 deemed to be registered if the corporation itself is registered under the laws of  
27 this state to practice architecture, engineering or land surveying.

28         2. Every mechanic or other person who shall do or perform any work or  
29 labor upon or furnish any material or machinery for the digging of a well to  
30 obtain water under or by virtue of any contract with the owner or lessee thereof,  
31 or such owner's or lessee's agent, trustee, contractor or subcontractor, upon  
32 complying with the provisions of sections 429.010 to 429.340 shall have for such  
33 person's work or labor done, or materials or machinery furnished, a lien upon the  
34 land belonging to such owner or lessee on which the same are situated, to the  
35 extent of [one acre] **three acres**, to secure the payment of such work or labor  
36 done, or materials or machinery furnished as aforesaid.

37         3. Every mechanic or other person who shall do or perform any work or  
38 labor upon, or furnish any material, fixtures, engine, boiler or machinery, for the  
39 purpose of demolishing or razing a building or structure under or by virtue of any  
40 contract with the owner or lessee thereof, or such owner's or lessee's agent,  
41 trustee, contractor or subcontractor, or without a contract if ordered by a city,  
42 town, village or county having a charter form of government to abate the  
43 conditions that caused a structure on that property to be deemed a dangerous  
44 building under local ordinances pursuant to section 67.410, upon complying with  
45 the provisions of sections 429.010 to 429.340, shall have for such person's work  
46 or labor done, or materials, fixtures, engine, boiler or machinery furnished, a lien  
47 upon the land belonging to such owner or lessee on which the same are situated,

48 to the extent of [one acre] **three acres**. If the building or buildings to be  
49 demolished or razed are upon any lot of land in any town, city or village, then the  
50 lien shall be upon the lot or lots or land upon which the building or other  
51 improvements are situated, to secure the payment for the labor and materials  
52 performed.

53 4. The provisions of sections 429.030 to 429.060 and sections 429.080 to  
54 429.430 applicable to liens of mechanics and other persons shall apply to and  
55 govern the procedure with respect to the liens provided for in subsections 1, 2 and  
56 3 of this section.

57 5. Any design professional or corporation authorized to have lien rights  
58 under subsection 1 of this section shall have a lien upon the building or other  
59 improvement and upon the land, whether or not actual construction of the  
60 planned work or improvement has commenced if:

61 (1) The owner or lessee thereof, or such owner's or lessee's agent or  
62 trustee, contracted for such professional services directly with the design  
63 professional or corporation asserting the lien; and

64 (2) The owner or lessee is the owner or lessee of such real property either  
65 at the time the contract is made or at the time the lien is filed.

66 6. Priority between a design professional or corporation lien claimant and  
67 any other mechanic's lien claimant shall be determined pursuant to the  
68 provisions of section 429.260 on a pro rata basis.

69 7. In any civil action, the owner or lessee may assert defenses which  
70 include that the actual construction of the planned work or improvement has not  
71 been performed in compliance with the professional services contract, is  
72 impracticable or is economically infeasible.

73 8. The agreement is in writing.

436.405. 1. As used in sections 436.400 to 436.520, unless the context  
2 otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the disposition  
4 or who will receive funeral services, facilities, or merchandise described in a  
5 preneed contract;

6 (2) "**Board**", the board of embalmers and funeral directors;

7 (3) "Guaranteed contract", a preneed contract in which the seller  
8 promises, assures, or guarantees to the purchaser that all or any portion of the  
9 costs for the disposition, services, facilities, or merchandise identified in a  
10 preneed contract will be no greater than the amount designated in the contract

11 upon the preneed beneficiary's death or that such costs will be otherwise limited  
12 or restricted;

13 [(3)] (4) "Insurance-funded preneed contract", a preneed contract which  
14 is designated to be funded by payments or proceeds from an insurance policy or  
15 [single premium] **a deferred annuity contract that is not classified as a**  
16 **variable annuity and has death benefit proceeds that are never less**  
17 **than the sum of premiums paid;**

18 [(4)] (5) "Joint account-funded preneed contract", a preneed contract  
19 which designates that payments for the preneed contract made by or on behalf of  
20 the purchaser will be deposited and maintained in a joint account in the names  
21 of the purchaser and seller, as provided in this chapter;

22 [(5)] (6) "Market value", a fair market value:

23 (a) As to cash, the amount thereof;

24 (b) As to a security as of any date, the price for the security as of that  
25 date obtained from a generally recognized source, or to the extent no generally  
26 recognized source exists, the price to sell the security in an orderly transaction  
27 between unrelated market participants at the measurement date; and

28 (c) As to any other asset, the price to sell the asset in an orderly  
29 transaction between unrelated market participants at the measurement date  
30 consistent with statements of financial accounting standards;

31 [(6)] (7) "Nonguaranteed contract", a preneed contract in which the seller  
32 does not promise, assure, or guarantee that all or any portion of the costs for the  
33 disposition, facilities, service, or merchandise identified in a preneed contract will  
34 be limited to the amount designated in the contract upon the preneed  
35 beneficiary's death or that such costs will be otherwise limited or restricted;

36 [(7)] (8) "Preneed contract", any contract or other arrangement which  
37 provides for the final disposition in Missouri of a dead human body, funeral or  
38 burial services or facilities, or funeral merchandise, where such disposition,  
39 services, facilities, or merchandise are not immediately required. Such contracts  
40 include, but are not limited to, agreements providing for a membership fee or any  
41 other fee for the purpose of furnishing final disposition, funeral or burial services  
42 or facilities, or funeral merchandise at a discount or at a future date;

43 [(8)] (9) "Preneed trust", a trust to receive deposits of, administer, and  
44 disburse payments received under preneed contracts, together with income  
45 thereon;

46 [(9)] (10) "Purchaser", the person who is obligated to pay under a

47 preneed contract;

48        [(10)] (11) "Trustee", the trustee of a preneed trust, including successor  
49 trustees;

50        [(11)] (12) "Trust-funded preneed contract", a preneed contract which  
51 provides that payments for the preneed contract shall be deposited and  
52 maintained in trust.

53        2. All terms defined in chapter 333 shall be deemed to have the same  
54 meaning when used in sections 436.400 to 436.520.

          436.412. Each preneed contract made before August 28, 2009, and all  
2 payments and disbursements under such contract shall continue to be governed  
3 by this chapter as the chapter existed at the time the contract was made. Any  
4 licensee or registrant of the board may be disciplined for violation of any  
5 provision of sections 436.005 to 436.071 within the applicable statute of  
6 limitations. [In addition, the provisions of section 436.031, as it existed on  
7 August 27, 2009, shall continue to govern disbursements to the seller from the  
8 trust and payment of trust expenses.] Joint accounts in existence as of August  
9 27, 2009, shall continue to be governed by the provisions of section 436.053, as  
10 that section existed on August 27, 2009.

          436.445. A trustee of any preneed trust, including trusts established  
2 before August 28, 2009, shall not after August 28, 2009, make any decisions to  
3 invest any trust fund with:

4        (1) The spouse of the trustee;

5        (2) The descendants, siblings, parents, or spouses of a seller or an officer,  
6 manager, director or employee of a seller, provider, or preneed agent;

7        (3) Agents, **other than authorized external investment advisors as**  
8 **authorized by section 436.440**, or attorneys of a trustee, seller, or provider;  
9 or

10        (4) A corporation or other person or enterprise in which the trustee, seller,  
11 or provider owns a controlling interest or has an interest that might affect the  
12 trustee's judgment.

          436.450. 1. An insurance-funded preneed contract shall comply with  
2 sections 436.400 to 436.520 and the specific requirements of this section.

3        2. A seller, provider, or any preneed agent shall not receive or collect from  
4 the purchaser of an insurance-funded preneed contract any amount in excess of  
5 what is required to pay the premiums on the insurance policy as assessed or  
6 required by the insurer as premium payments for the insurance policy except for

7 any amount required or authorized by this chapter or by rule. A seller shall not  
8 receive or collect any administrative or other fee from the purchaser for or in  
9 connection with an insurance-funded preneed contract, other than those fees or  
10 amounts assessed by the insurer. As of August 29, 2009, no preneed seller,  
11 provider, or agent shall use any existing preneed contract as collateral or security  
12 pledged for a loan or take preneed funds of any existing preneed contract as a  
13 loan for any purpose other than as authorized by this chapter.

14 3. Payments collected by or on behalf of a seller for an insurance-funded  
15 preneed contract shall be promptly remitted to the insurer or the insurer's  
16 designee as required by the insurer; provided that payments shall not be retained  
17 or held by the seller or preneed agent for more than thirty days from the date of  
18 receipt.

19 4. It is unlawful for a seller, provider, or preneed agent to procure or  
20 accept a loan against any insurance contract used to fund a preneed contract.

21 5. Laws regulating insurance shall not apply to preneed contracts, but  
22 shall apply to any insurance or [single premium] annuity sold with a preneed  
23 contract; provided, however, the provisions of [this act] **sections 436.400 to**  
24 **436.520** shall not apply to [single premium] annuities or insurance policies  
25 regulated by chapters 374, 375, and 376 used to fund preneed funeral  
26 agreements, contracts, or programs.

27 6. This section shall apply to all preneed contracts including those entered  
28 into before August 28, 2009.

29 7. For any insurance-funded preneed contract sold after August 28, 2009,  
30 the following shall apply:

31 (1) The purchaser or beneficiary shall be the owner of the insurance policy  
32 purchased to fund a preneed contract; and

33 (2) An insurance-funded preneed contract shall be valid and enforceable  
34 only if the seller or provider is named as the beneficiary or assignee of the life  
35 insurance policy funding the contract.

36 8. If the proceeds of the life insurance policy exceed the actual cost of the  
37 goods and services provided pursuant to the nonguaranteed preneed contract, any  
38 overage shall be paid to the estate of the beneficiary, or, if the beneficiary  
39 received public assistance, to the state of Missouri.

436.455. 1. A joint account-funded preneed contract shall comply with  
2 sections 436.400 to 436.520 and the specific requirements of this section.

3 2. In lieu of a trust-funded or insurance-funded preneed contract, the

4 seller and the purchaser may agree in writing that all funds paid by the  
5 purchaser or beneficiary for the preneed contract shall be deposited with a  
6 financial institution chartered and regulated by the federal or state government  
7 authorized to do business in Missouri in an account in the joint names and under  
8 the joint control of the seller and purchaser, beneficiary or party holding power  
9 of attorney over the beneficiary's estate, **or in an account titled in the**  
10 **beneficiary's name and payable on the beneficiary's death to the**  
11 **seller.** There shall be a separate joint account established for each preneed  
12 contract sold or arranged under this section. Funds shall only be withdrawn or  
13 paid from the account upon the signatures of both the seller and the purchaser  
14 or under a pay-on-death designation or as required to pay reasonable expenses  
15 of administering the account.

16 3. All consideration paid by the purchaser under a joint account-funded  
17 contract shall be deposited into a joint account as authorized by this section  
18 within ten days of receipt of payment by the seller.

19 4. The financial institution shall hold, invest, and reinvest funds  
20 deposited under this section in other accounts offered to depositors by the  
21 financial institutions as provided in the written agreement of the purchaser and  
22 the seller, provided the financial institution shall not invest or reinvest any funds  
23 deposited under this section in term life insurance or any investment that does  
24 not reasonably have the potential to gain income or increase in value.

25 5. Income generated by preneed funds deposited under this section shall  
26 be used to pay the reasonable expenses of administering the account as charged  
27 by the financial institution and the balance of the income shall be distributed or  
28 reinvested upon fulfillment of the contract, cancellation or transfer pursuant to  
29 the provisions of this chapter.

30 6. Within fifteen days after a provider [and a witness certify to the  
31 financial institution in writing] **delivers a copy of a certificate of**  
32 **performance to the seller, signed by the provider and the person**  
33 **authorized to make arrangements on behalf of the beneficiary,**  
34 **certifying** that the provider has furnished the final disposition, funeral, and  
35 burial services and facilities, and merchandise as required by the preneed  
36 contract, or has provided alternative funeral benefits for the beneficiary under  
37 special arrangements made with the purchaser, the [financial institution shall  
38 distribute the deposited funds to the seller if the certification has been approved  
39 by the purchaser] **seller shall take whatever steps are required by the**

40 **financial institution to secure payment of the funds from the financial**  
41 **institution.** The seller shall pay the provider within ten days of receipt of funds.

42 7. Any seller, provider, or preneed agent shall not procure or accept a loan  
43 against any investment, or asset of, or belonging to a joint account. As of August  
44 28, 2009, it shall be prohibited to use any existing preneed contract as collateral  
45 or security pledged for a loan, or take preneed funds of any existing preneed  
46 contract as a loan or for any purpose other than as authorized by this chapter.

436.456. At any time before final disposition, or before the funeral or  
2 burial services, facilities, or merchandise described in a preneed contract are  
3 furnished, the purchaser may cancel the contract, if designated as revocable,  
4 without cause. In order to cancel the contract the purchaser shall:

5 (1) In the case of a joint account-funded preneed contract, deliver written  
6 notice of the cancellation to the seller [and the financial institution]. Within  
7 fifteen days of receipt of notice of the cancellation, the [financial institution shall  
8 distribute all deposited funds to the purchaser] **seller shall take whatever**  
9 **steps may be required by the financial institution to obtain the funds**  
10 **from the financial institution. Upon receipt of the funds from the**  
11 **financial institution, the seller shall distribute the principal to the**  
12 **purchaser.** Interest shall be distributed as provided in the agreement with the  
13 seller and purchaser;

14 (2) In the case of an insurance-funded preneed contract, deliver written  
15 notice of the cancellation to the seller. Within fifteen days of receipt of notice of  
16 the cancellation, the seller shall notify the purchaser that the cancellation of the  
17 contract shall not cancel any life insurance funding the contract and that  
18 insurance cancellation is required to be made in writing to the insurer;

19 (3) In the case of a trust-funded preneed contract, deliver written notice  
20 of the cancellation to the seller and trustee. Within fifteen days of receipt of  
21 notice of the cancellation, the trustee shall distribute one hundred percent of the  
22 trust property including any percentage of the total payments received on the  
23 trust-funded contract that have been withdrawn from the account under  
24 subsection 4 of section 436.430 but excluding the income, to the purchaser of the  
25 contract;

26 (4) In the case of a guaranteed installment payment contract where the  
27 beneficiary dies before all installments have been paid, the purchaser shall pay  
28 the seller the amount remaining due under the contract in order to receive the  
29 goods and services set out in the contract, otherwise the purchaser or their estate

30 will receive full credit for all payments the purchaser has made towards the cost  
31 of the beneficiary's funeral at the provider current prices.

516.098. [1.] Except where fraud is involved, no action to recover  
2 damages for an error or omission in the survey of land, nor any action for  
3 contribution or indemnity for damages sustained on account of an error or  
4 omission may be brought against any person performing the survey more than  
5 [five years after the discovery of the error or omission] **ten years from the**  
6 **completion of the survey.**

7 [2. This section shall become effective January 1, 1990.]

[335.206. 1. The nurse training incentive fund shall, upon  
2 appropriation, be used to provide incentive grants to eligible  
3 nursing programs which increase enrollment. Grants shall not be  
4 awarded to classes begun on or after July 1, 1996.

5 2. Grants shall be awarded to eligible nursing programs  
6 which increase enrollment pursuant to subsection 3 of this section.  
7 Eligible programs receiving grants provided under sections 335.200  
8 to 335.209 shall monitor the enrollment of nontraditional students  
9 in their program and shall annually report to the board the number  
10 of nontraditional students enrolled therein. It shall be the intent  
11 of sections 335.200 to 335.209 to encourage the enrollment and  
12 graduation of nontraditional students in nursing education  
13 programs.

14 3. Incentive grants shall be awarded to professional nurse  
15 education programs, as follows:

16 (1) A grant of eight thousand dollars for each entering class  
17 of ten students by which the program increases its enrollment over  
18 the number of entering students admitted in the fall of 1989; and

19 (2) A grant of four hundred dollars for each student from  
20 each entering class cited in subdivision (1) of this section by which  
21 the program increases its number of graduates over the number of  
22 students graduated in the preceding year; or

23 (3) Beginning with the first graduating class of the classes  
24 which enter and are enrolled after August 28, 1990, a grant of four  
25 hundred dollars for each student by which the program increases  
26 its number of graduates over the number of graduates of the  
27 preceding year, if the program is not otherwise qualified to receive

28 the grant provided pursuant to subdivision (1) of this section.]

2 [335.209. No rule or portion of a rule promulgated under  
3 the authority of sections 335.200 to 335.209 shall become effective  
4 unless it has been promulgated pursuant to the provisions of  
5 section 536.024.]

6 Section B. Because immediate action is necessary to ensure the  
7 continuance of clinical trials in this state, the repeal and reenactment of section  
8 338.330 of section A of this act is deemed necessary for the immediate  
9 preservation of the public health, welfare, peace, and safety, and is hereby  
10 declared to be an emergency act within the meaning of the constitution, and the  
11 repeal and reenactment of section 338.330 of section A of this act shall be in full  
12 force and effect upon its passage and approval.

✓

Bill

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