

FIRST REGULAR SESSION

# SENATE BILL NO. 447

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

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ADRIANE D. CROUSE, Secretary.

1984S.01I

## AN ACT

To repeal section 324.001, RSMo, and to enact in lieu thereof one new section relating to the division of professional registration.

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

Section A. Section 324.001, RSMo, is repealed and one new section  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

324.001. 1. **(1) The purpose of sections 324.001 to 324.1109 is to**  
2 **promote the general welfare by establishing guidelines for the**  
3 **regulation of occupations and professions not regulated prior to**  
4 **January 1, 2018, and those occupations and professions regulated prior**  
5 **to January 1, 2018, that seek to substantially increase their scope of**  
6 **practice.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57            [(2)] (4) "Director", the director of the division of professional  
58 registration; [and]

59            [(3)] (5) "Division", the division of professional registration;

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

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

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

68            (a) Bonding or insurance;

69            (b) Registration;

70            (c) Certification;

71            (d) Occupational license;

72            (9) "Legislative committees of reference", the standing legislative  
73 committees designated by the respective rules committees of the senate  
74 and house of representatives to consider proposed legislation to  
75 regulate occupations, or professions not previously regulated or those  
76 seeking to substantially increase their scope of practice;

77            (10) "Occupational license", a nontransferable authorization in  
78 law for an individual to perform a lawful occupation for compensation  
79 based on meeting personal qualifications established by a legislative  
80 body. It shall be prohibited for an individual who does not possess an  
81 occupational license to perform the occupation for compensation;

82            (11) "Occupational regulation", a statute, ordinance, rule,  
83 practice, policy, or other law requiring an individual to possess certain  
84 personal qualifications to work in a lawful occupation;

85            (12) "Personal qualifications", criteria related to an individual's  
86 personal background, including completion of an approved educational  
87 program, satisfactory performance on an examination, work  
88 experience, criminal history, and completion of continuing education;

89            (13) "Practitioner", an individual who has achieved knowledge  
90 and skill by practice and is actively engaged in a specified occupation  
91 or profession;

92            (14) "Public member", an individual who is not currently, and has  
93 never been in the past, a member or spouse of a member of the

94 occupation or profession being regulated or an individual who does not  
95 currently have and has never in the past had a material financial  
96 interest in either the rendering of the occupation or professional  
97 service being regulated or an activity directly related to the occupation  
98 or profession being regulated;

99 (15) "Registration", a requirement established by the legislature  
100 in which a person:

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

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

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

111 (16) "Regulatory entity", any board, commission, agency, division,  
112 or other unit or subunit of state government which regulates one or  
113 more professions, occupations, industries, businesses, or other  
114 endeavors in this state;

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

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

123 3. After January 1, 2018, applicant groups shall explain each of  
124 the following factors to the extent requested by the legislative  
125 committees of reference:

126 (1) A description of the professional or occupational group  
127 proposed for regulation or expansion of regulation, including the  
128 number of individuals or business entities that would be subject to  
129 regulation, the names and addresses of associations, organizations, and  
130 other groups representing the practitioners, and an estimate of the

131 number of practitioners in each group;

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

136 (3) The nature and extent of potential harm to the public if the  
137 profession or occupation is not regulated, the extent to which there is  
138 a threat to the general welfare and production of evidence of potential  
139 harm, including a description of any complaints filed with state law  
140 enforcement authorities, courts, departmental agencies, other  
141 professional or occupational boards, and professional and occupational  
142 associations that have been lodged against practitioners of the  
143 profession or occupation in this state within the past five years;

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

149 (5) The extent to which regulation or expansion of regulation of  
150 the profession or occupation will increase the cost of goods or services  
151 provided by practitioners and the overall cost-effectiveness and  
152 economic impact of the proposed regulation, including the direct cost  
153 to the government and the indirect costs to consumers;

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

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

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

166 (9) A list of other states that regulate the profession or  
167 occupation, the type of regulation, copies of other states' laws, and

168 available evidence from those states of the effect of regulation on the  
169 profession or occupation in terms of a before-and-after analysis;

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

172 (11) Whether the profession or occupation plans to apply for  
173 mandated benefits;

174 (12) Whether the proposed requirements for regulation exceed  
175 the standards of minimal competence and what those standards are;

176 (13) The method proposed to finance the proposed regulation  
177 and financial data pertaining to whether the proposed regulation can  
178 be reasonably financed by current or proposed licensees through  
179 dedicated revenue mechanisms; and

180 (14) Whether the regulatory entity would be authorized and  
181 proactive in entering into reciprocity agreements with other  
182 jurisdictions.

183 4. Applicant groups shall submit a written report explaining the  
184 factors enumerated in subsection 3 of this section to the legislative  
185 committees of reference.

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

193 [3.] 6. The director of the division of professional registration shall  
194 promulgate rules and regulations which designate for each board or commission  
195 assigned to the division the renewal date for licenses or certificates. After the  
196 initial establishment of renewal dates, no director of the division shall  
197 promulgate a rule or regulation which would change the renewal date for licenses  
198 or certificates if such change in renewal date would occur prior to the date on  
199 which the renewal date in effect at the time such new renewal date is specified  
200 next occurs. Each board or commission shall by rule or regulation establish  
201 licensing periods of one, two, or three years. Registration fees set by a board or  
202 commission shall be effective for the entire licensing period involved, and shall  
203 not be increased during any current licensing period. Persons who are required

204 to pay their first registration fees shall be allowed to pay the pro rata share of  
205 such fees for the remainder of the period remaining at the time the fees are  
206 paid. Each board or commission shall provide the necessary forms for initial  
207 registration, and thereafter the director may prescribe standard forms for renewal  
208 of licenses and certificates. Each board or commission shall by rule and  
209 regulation require each applicant to provide the information which is required to  
210 keep the board's records current. Each board or commission shall have the  
211 authority to collect and analyze information required to support workforce  
212 planning and policy development. Such information shall not be publicly  
213 disclosed so as to identify a specific health care provider, as defined in section  
214 376.1350. Each board or commission shall issue the original license or certificate.

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

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

236 [6.] 9. For accounting purposes, the appropriation to the division and to  
237 the office of administration for the payment of rent for quarters provided for the  
238 division shall be made from the "Professional Registration Fees Fund", which is  
239 hereby created, and is to be used solely for the purpose defined in subsection [5]

240 8 of this section. The fund shall consist of moneys deposited into it from each  
241 board's fund. Each board shall contribute a prorated amount necessary to fund  
242 the division for services rendered and rent based upon the system of accounting  
243 and budgeting established by the director of the division as provided in  
244 subsection [5] 8 of this section. Transfers of funds to the professional  
245 registration fees fund shall be made by each board on July first of each year;  
246 provided, however, that the director of the division may establish an alternative  
247 date or dates of transfers at the request of any board. Such transfers shall be  
248 made until they equal the prorated amount for services rendered and rent by the  
249 division. The provisions of section 33.080 to the contrary notwithstanding, money  
250 in this fund shall not be transferred and placed to the credit of general revenue.

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

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

276 registration, and currency of the license of the persons possessing licenses to  
277 engage in a professional occupation and the names and addresses of applicants  
278 for such licenses is not confidential information.

279 [9.] 12. Any deliberations conducted and votes taken in rendering a final  
280 decision after a hearing before an agency assigned to the division shall be closed  
281 to the parties and the public. Once a final decision is rendered, that decision  
282 shall be made available to the parties and the public.

283 [10.] 13. A compelling governmental interest shall be deemed to exist for  
284 the purposes of section 536.025 for licensure fees to be reduced by emergency  
285 rule, if the projected fund balance of any agency assigned to the division of  
286 professional registration is reasonably expected to exceed an amount that would  
287 require transfer from that fund to general revenue.

288 [11.] 14. (1) The following boards and commissions are assigned by  
289 specific type transfers to the division of professional registration: Missouri state  
290 board of accountancy, chapter 326; board of cosmetology and barber examiners,  
291 chapters 328 and 329; Missouri board for architects, professional engineers,  
292 professional land surveyors and landscape architects, chapter 327; Missouri state  
293 board of chiropractic examiners, chapter 331; state board of registration for the  
294 healing arts, chapter 334; Missouri dental board, chapter 332; state board of  
295 embalmers and funeral directors, chapter 333; state board of optometry, chapter  
296 336; Missouri state board of nursing, chapter 335; board of pharmacy, chapter  
297 338; state board of podiatric medicine, chapter 330; Missouri real estate  
298 appraisers commission, chapter 339; and Missouri veterinary medical board,  
299 chapter 340. The governor shall appoint members of these boards by and with  
300 the advice and consent of the senate.

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

312 committees annually.

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

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

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

343 [12.] 15. All the powers, duties, and functions of the division of athletics,  
344 chapter 317, and others, are assigned by type I transfer to the division of  
345 professional registration.

346 [13.] 16. Wherever the laws, rules, or regulations of this state make  
347 reference to the division of professional registration of the department of

348 economic development, such references shall be deemed to refer to the division  
349 of professional registration.

350 [14.] 17. (1) The state board of nursing, board of pharmacy, Missouri  
351 dental board, state committee of psychologists, state board of chiropractic  
352 examiners, state board of optometry, Missouri board of occupational therapy, or  
353 state board of registration for the healing arts may individually or collectively  
354 enter into a contractual agreement with the department of health and senior  
355 services, a public institution of higher education, or a nonprofit entity for the  
356 purpose of collecting and analyzing workforce data from its licensees, registrants,  
357 or permit holders for future workforce planning and to assess the accessibility  
358 and availability of qualified health care services and practitioners in  
359 Missouri. The boards shall work collaboratively with other state governmental  
360 entities to ensure coordination and avoid duplication of efforts.

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

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

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

382 (5) Contractors shall maintain the security and confidentiality of data  
383 received or collected under this subsection and shall not use, disclose, or release

384 any data without approval of the applicable state board. The contractual  
385 agreement between the applicable state board and contractor shall establish a  
386 data release and research review policy to include legal and institutional review  
387 board, or agency-equivalent, approval.

388 (6) Each board may promulgate rules subject to the provisions of this  
389 subsection and chapter 536 to effectuate and implement the workforce data  
390 collection and analysis authorized by this subsection. Any rule or portion of a  
391 rule, as that term is defined in section 536.010, that is created under the  
392 authority delegated in this section shall become effective only if it complies with  
393 and is subject to all of the provisions of chapter 536 and, if applicable, section  
394 536.028. This section and chapter 536 are nonseverable and if any of the powers  
395 vested with the general assembly under chapter 536 to review, to delay the  
396 effective date, or to disapprove and annul a rule are subsequently held  
397 unconstitutional, then the grant of rulemaking authority and any rule proposed  
398 or adopted after August 28, 2016, shall be invalid and void.

✓

Bill

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