

FIRST REGULAR SESSION

SENATE BILL NO. 500

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time February 28, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2392S.01I

AN ACT

To amend chapter 324, RSMo, by adding thereto one new section relating to provision of services by an unlicensed individual.

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

Section A. Chapter 324, RSMo, is amended by adding thereto one new section, to be known as section 324.1600, to read as follows:

324.1600. 1. This section shall be known and may be cited as the "occupational licensing consumer choice act".

2. As used in this section, the following terms shall mean:

(1) "Lawful occupation", a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the person selling them is subject to the requirements of an occupational license;

(2) "Nonlicensed disclosure", a written disclosure that a person is working in a lawful occupation without an occupational license as required by subsection 3 of this section;

(3) "Occupational license", a statute, rule, policy, enforcement practice or action, or any other requirement by a state authority that requires a person to obtain and maintain personal qualifications to work in a lawful occupation. It excludes a business license, facility license, building permit, inspection requirement, building code, zoning law, or land-use regulation except to the extent any of those legal requirements regulate a person's personal qualifications to perform a lawful occupation;

(4) "Personal qualifications", criteria related to a person's personal background and characteristics including completion of an approved educational program, satisfactory performance on an

22 examination, work experience, other evidence of attainment of
23 requisite skills or knowledge, and completion of continuing education;

24 (5) "State authority", any state agency, department, board,
25 commission, or other governing body, and includes executive and
26 administrative officers of such bodies.

27 3. (1) To provide a service for which state law otherwise
28 requires an occupational license, an unlicensed person shall make a
29 nonlicensed disclosure stating that:

30 (a) The unlicensed person is working in a lawful occupation
31 without a license;

32 (b) The state otherwise requires that providers of the service
33 hold an occupational license; and

34 (c) The unlicensed person is allowed to provide the service under
35 this section.

36 (2) The unlicensed person shall make the nonlicensed disclosure
37 in subdivision (1) of this subsection by at least one of the following
38 means:

39 (a) By notice on the homepage of the unlicensed person's
40 website;

41 (b) By sending a letter, email, or other written correspondence
42 to the consumer prior to providing the service;

43 (c) By notice posted at the entry of the facility at which the
44 consumer enters to receive services from the unlicensed person; or

45 (d) In a written contract or purchase order signed by the
46 consumer prior to providing the service.

47 4. An unlicensed person may meet the requirements of
48 subsection 3 of this section by using the following form:

49 "I. PROVIDER'S DISCLOSURE: Missouri law requires providers of the
50 service that you, the consumer, are agreeing to purchase in this
51 contract to hold an occupational license. I am not licensed by the state,
52 but by providing this nonlicensed disclosure I am allowed by Section
53 324.1600, RSMo, to perform the service in this contract.

54 _____
55 Unlicensed Person's Name Unlicensed Person's Website
56 (Printed)

57 _____
58 Unlicensed Person's Unlicensed Person's E-mail

59	Physical Address	Address
60	() _____	() _____
61	Unlicensed Person's	Unlicensed Person's 2nd
62	Telephone Number	Telephone Number
63	Service provided:	
64	_____	
65	_____	
66	_____	
67	_____	_____

68	Unlicensed Person's Signature	Date
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69 The unlicensed person may list the private trade organizations to
 70 which the unlicensed person belongs and any titles or credentials the
 71 unlicensed person earned from those organizations.

72 **II. CONSUMER ACKNOWLEDGMENT:** I acknowledge I am entering
 73 into an agreement with a provider who does not hold an occupational
 74 license. I understand Missouri licenses this occupation, and I may
 75 contract with either a licensed or unlicensed person for this service.

76	_____	_____
77	Consumer's Signature	Date"

78 5. A person otherwise subject to the requirements of an
 79 occupational license by a state authority may work in the state without
 80 an occupational license if such person makes a nonlicensed disclosure.

81 6. An employer or contractor may:

82 (1) Hire or contract with an unlicensed person otherwise subject
 83 to the requirements of occupational licenses; and

84 (2) Offer such unlicensed person's services to a consumer if the
 85 employer or contractor makes a nonlicensed disclosure.

86 7. An unlicensed person may not be denied any privilege in state
 87 law granted to a person holding an occupational license provided a
 88 nonlicensed disclosure is made by the unlicensed person, or the
 89 unlicensed person's employer or contractor.

90 8. A state authority shall disclose on such state authority's
 91 internet website and all written or digital and online application forms
 92 for occupational licenses that a person may work in the state without
 93 an occupational license otherwise required, provided a nonlicensed
 94 disclosure is made by the unlicensed person or the unlicensed person's
 95 employer or contractor.

96 **9. Production of a nonlicensed disclosure or other evidence made**
97 **under oath or affirmation that shows disclosure was made by another**
98 **means allowed by subsection 3 of this section prior to providing the**
99 **service is a defense against any administrative, civil or criminal action**
100 **brought by a state authority for the purpose of enforcing the personal**
101 **qualifications necessary to obtain and maintain an occupational**
102 **license. Production of such evidence shall result in the immediate**
103 **dismissal with prejudice of any administrative, civil or criminal action**
104 **brought by a state authority for the purpose of enforcing the personal**
105 **qualifications necessary to obtain and maintain an occupational license**
106 **against an unlicensed person engaged in a lawful occupation.**

107 **10. Any consumer injured by an unlicensed person operating**
108 **under this section may bring in small-claims or circuit court a civil**
109 **action and recover damages, together with costs and disbursements,**
110 **including costs of investigation and reasonable attorney's fees, and**
111 **receive other equitable relief as determined by the court. The court**
112 **may, as appropriate, enter a consent judgment or decree without the**
113 **finding of illegality.**

114 **11. This act shall apply to the regulation of all licensed**
115 **occupations in the state except for the following providers of human**
116 **healthcare:**

117 **(1) Anesthesiologists and anesthesiologist assistants licensed**
118 **under chapter 334;**

119 **(2) Athletic trainers licensed under chapter 334;**

120 **(3) Chiropractors licensed under chapter 331;**

121 **(4) Dentists and dental hygienists licensed under chapter 332;**

122 **(5) Optometrists licensed under chapter 336;**

123 **(6) Pharmacists and pharmacy technicians licensed under**
124 **chapter 338;**

125 **(7) Physical therapists and physical therapist assistants licensed**
126 **under chapter 334;**

127 **(8) Podiatrists licensed under chapter 330;**

128 **(9) Psychologists licensed under chapter 337;**

129 **(10) Physicians and physician assistants licensed under chapter**
130 **334;**

131 **(11) Registered nurse professionals licensed under chapter 335;**

132 **(12) Respiratory care practitioners licensed under chapter 334.**

133 **12. Nothing in this section shall be construed to require:**

134 **(1) A state authority, county or other governmental body to**
135 **employ or contract with a person who does not hold an occupational**
136 **license;**

137 **(2) A state, county, or other governmental body to approve plans,**
138 **drawings or documents related to the construction of buildings or**
139 **houses submitted by a person who does not hold an occupational**
140 **license;**

141 **(3) The federal government to grant credentials, privileges or**
142 **benefits under federal law to a person who does not hold an**
143 **occupational license;**

144 **(4) A consumer to employ or contract with an unlicensed person;**

145 **(5) An employer, person, or company to employ or contract with**
146 **an unlicensed person;**

147 **(6) An insurance or bonding company to issue a policy or bond**
148 **to an unlicensed person;**

149 **(7) A state authority, federal government, or health insurance**
150 **carrier, as defined in section 376.1350, to pay or reimburse an**
151 **unlicensed person for their services;**

152 **(8) A hospital or medical facility to grant admitting, operating**
153 **or other privileges to an unlicensed person;**

154 **(9) A physician to order a prescription to be filled by an**
155 **unlicensed person;**

156 **(10) A judicial court to allow an unlicensed person to practice**
157 **law before it on behalf of a consumer;**

158 **(11) A state authority to refrain from ordering the revocation of**
159 **occupational license and prohibiting any person whose occupational**
160 **license has been revoked from working as an unlicensed person in that**
161 **same occupation;**

162 **(12) A state authority to refrain from obtaining a court order**
163 **enjoining a person whose previously-held occupational license was**
164 **revoked from working as an unlicensed person in that same occupation;**

165 **(13) A state authority to refrain from enforcing health and safety**
166 **regulations, including regulations permitting inspections, which are**
167 **not related to the personal qualifications necessary to obtain and**
168 **maintain an occupational license; or**

169 **(14) A private certification organization to grant or deny its**

170 **private certification to any person.**

171 **13. This section shall not be construed to impose any new or**
172 **additional requirements on a person who is engaged in a lawful**
173 **occupation that is not subject to the requirements of an occupational**
174 **license.**

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