

SECOND REGULAR SESSION

# HOUSE BILL NO. 1513

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

3159H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 324.001, RSMo, and to enact in lieu thereof two new sections relating to discipline procedures for certain health care professionals.

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

Section A. Section 324.001, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 324.001 and 334.109, to read as follows:

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

- (1) "Department", the department of commerce and insurance;
- (2) "Director", the director of the division of professional registration; and
- (3) "Division", the division of professional registration.

2. There is hereby established a "Division of Professional Registration" assigned to the department of commerce and insurance as a type III transfer, headed by a director appointed by the governor with the advice and consent of the senate. All of the general provisions, definitions and powers enumerated in section 1 of the Omnibus State Reorganization Act of 1974 and Executive Order 06-04 shall apply to this department and its divisions, agencies, and personnel.

3. The director of the division of professional registration shall promulgate rules and regulations which designate for each board or commission assigned to the division the renewal date for licenses or certificates. After the initial establishment of renewal dates, no director of the division shall promulgate a rule or regulation which would change the renewal date for licenses or certificates if such change in renewal date would occur prior to the date on which the renewal date in effect at the time such new renewal date is specified next occurs. Each board or commission shall by rule or regulation establish licensing periods of one, two,

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 or three years. Registration fees set by a board or commission shall be effective for the entire  
19 licensing period involved, and shall not be increased during any current licensing period.  
20 Persons who are required to pay their first registration fees shall be allowed to pay the pro rata  
21 share of such fees for the remainder of the period remaining at the time the fees are paid.  
22 Each board or commission shall provide the necessary forms for initial registration, and  
23 thereafter the director may prescribe standard forms for renewal of licenses and certificates.  
24 Each board or commission shall by rule and regulation require each applicant to provide the  
25 information which is required to keep the board's records current. Each board or commission  
26 shall have the authority to collect and analyze information required to support workforce  
27 planning and policy development. Such information shall not be publicly disclosed so as to  
28 identify a specific health care provider, as defined in section 376.1350. Each board or  
29 commission shall issue the original license or certificate.

30 4. The division shall provide clerical and other staff services relating to the issuance  
31 and renewal of licenses for all the professional licensing and regulating boards and  
32 commissions assigned to the division. The division shall perform the financial management  
33 and clerical functions as they each relate to issuance and renewal of licenses and certificates.  
34 "Issuance and renewal of licenses and certificates" means the ministerial function of  
35 preparing and delivering licenses or certificates, and obtaining material and information for  
36 the board or commission in connection with the renewal thereof to include verifying if the  
37 applicant has submitted all required documentation and that the documentation is legible. It  
38 does not include any discretionary authority with regard to the original review of an  
39 applicant's qualifications for licensure or certification, or the subsequent review of licensee's  
40 or certificate holder's qualifications, or any disciplinary action contemplated against the  
41 licensee or certificate holder. The division may develop and implement microfilming systems  
42 and automated or manual management information systems.

43 5. The director of the division shall maintain a system of accounting and budgeting, in  
44 cooperation with the director of the department, the office of administration, and the state  
45 auditor's office, to ensure proper charges are made to the various boards for services rendered  
46 to them. The general assembly shall appropriate to the division and other state agencies from  
47 each board's funds moneys sufficient to reimburse the division and other state agencies for all  
48 services rendered and all facilities and supplies furnished to that board.

49 6. For accounting purposes, the appropriation to the division and to the office of  
50 administration for the payment of rent for quarters provided for the division shall be made  
51 from the "Professional Registration Fees Fund", which is hereby created, and is to be used  
52 solely for the purpose defined in subsection 5 of this section. The fund shall consist of  
53 moneys deposited into it from each board's fund. Each board shall contribute a prorated  
54 amount necessary to fund the division for services rendered and rent based upon the system of

55 accounting and budgeting established by the director of the division as provided in subsection  
56 5 of this section. Transfers of funds to the professional registration fees fund shall be made by  
57 each board on July first of each year; provided, however, that the director of the division may  
58 establish an alternative date or dates of transfers at the request of any board. Such transfers  
59 shall be made until they equal the prorated amount for services rendered and rent by the  
60 division. The provisions of section 33.080 to the contrary notwithstanding, money in this  
61 fund shall not be transferred and placed to the credit of general revenue.

62 7. The director of the division shall be responsible for collecting and accounting for  
63 all moneys received by the division or its component agencies. Any money received by a  
64 board or commission shall be promptly given, identified by type and source, to the director.  
65 The director shall keep a record by board and state accounting system classification of the  
66 amount of revenue the director receives. The director shall promptly transmit all receipts to  
67 the department of revenue for deposit in the state treasury to the credit of the appropriate  
68 fund. The director shall provide each board with all relevant financial information in a timely  
69 fashion. Each board shall cooperate with the director by providing necessary information.

70 8. All educational transcripts, test scores, complaints, investigatory reports, and  
71 information pertaining to any person who is an applicant or licensee of any agency assigned  
72 to the division of professional registration by statute or by the department are confidential and  
73 may not be disclosed to the public or any member of the public, except with the written  
74 consent of the person whose records are involved. The agency which possesses the records or  
75 information shall disclose the records or information if the person whose records or  
76 information is involved has consented to the disclosure. Each agency is entitled to the  
77 attorney-client privilege and work-product privilege to the same extent as any other person.  
78 Provided, however, that any board may disclose confidential information without the consent  
79 of the person involved in the course of voluntary interstate exchange of information, or in the  
80 course of any litigation concerning that person, or pursuant to a lawful request, or to other  
81 administrative or law enforcement agencies acting within the scope of their statutory  
82 authority. Information regarding identity, including names and addresses, registration, and  
83 currency of the license of the persons possessing licenses to engage in a professional  
84 occupation and the names and addresses of applicants for such licenses is not confidential  
85 information. **The provisions of this subsection shall not apply to any confidential**  
86 **information disclosed to a complainant patient, his or her representative, or the**  
87 **complainant patient's or representative's attorney when such persons are attending a**  
88 **hearing as permitted under section 334.109.**

89 9. Any deliberations conducted and votes taken in rendering a final decision after a  
90 hearing before an agency assigned to the division shall be closed to the parties and the public.

91 Once a final decision is rendered, that decision shall be made available to the parties and the  
92 public.

93 10. A compelling governmental interest shall be deemed to exist for the purposes of  
94 section 536.025 for licensure fees to be reduced by emergency rule, if the projected fund  
95 balance of any agency assigned to the division of professional registration is reasonably  
96 expected to exceed an amount that would require transfer from that fund to general revenue.

97 11. (1) The following boards and commissions are assigned by specific type transfers  
98 to the division of professional registration: Missouri state board of accountancy, chapter 326;  
99 board of cosmetology and barber examiners, chapters 328 and 329; Missouri board for  
100 architects, professional engineers, professional land surveyors and landscape architects,  
101 chapter 327; Missouri state board of chiropractic examiners, chapter 331; state board of  
102 registration for the healing arts, chapter 334; Missouri dental board, chapter 332; state board  
103 of embalmers and funeral directors, chapter 333; state board of optometry, chapter 336;  
104 Missouri state board of nursing, chapter 335; board of pharmacy, chapter 338; state board of  
105 podiatric medicine, chapter 330; Missouri real estate appraisers commission, chapter 339; and  
106 Missouri veterinary medical board, chapter 340. The governor shall appoint members of  
107 these boards by and with the advice and consent of the senate.

108 (2) The boards and commissions assigned to the division shall exercise all their  
109 respective statutory duties and powers, except those clerical and other staff services involving  
110 collecting and accounting for moneys and financial management relating to the issuance and  
111 renewal of licenses, which services shall be provided by the division, within the appropriation  
112 therefor. Nothing herein shall prohibit employment of professional examining or testing  
113 services from professional associations or others as required by the boards or commissions on  
114 contract. Nothing herein shall be construed to affect the power of a board or commission to  
115 expend its funds as appropriated. However, the division shall review the expense vouchers of  
116 each board. The results of such review shall be submitted to the board reviewed and to the  
117 house and senate appropriations committees annually.

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

122 (4) "Board personnel", as used in this section or chapters 317, 326, 327, 328, 329,  
123 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall mean personnel whose  
124 functions and responsibilities are in areas not related to the clerical duties involving the  
125 issuance and renewal of licenses, to the collecting and accounting for moneys, or to financial  
126 management relating to issuance and renewal of licenses; specifically included are executive  
127 secretaries (or comparable positions), consultants, inspectors, investigators, counsel, and

128 secretarial support staff for these positions; and such other positions as are established and  
129 authorized by statute for a particular board or commission. Boards and commissions may  
130 employ legal counsel, if authorized by law, and temporary personnel if the board is unable to  
131 meet its responsibilities with the employees authorized above. Any board or commission  
132 which hires temporary employees shall annually provide the division director and the  
133 appropriation committees of the general assembly with a complete list of all persons  
134 employed in the previous year, the length of their employment, the amount of their  
135 remuneration, and a description of their responsibilities.

136 (5) Board personnel for each board or commission shall be employed by and serve at  
137 the pleasure of the board or commission, shall be supervised as the board or commission  
138 designates, and shall have their duties and compensation prescribed by the board or  
139 commission, within appropriations for that purpose, except that compensation for board  
140 personnel shall not exceed that established for comparable positions as determined by the  
141 board or commission pursuant to the job and pay plan of the department of commerce and  
142 insurance. Nothing herein shall be construed to permit salaries for any board personnel to be  
143 lowered except by board action.

144 12. All the powers, duties, and functions of the division of athletics, chapter 317, and  
145 others, are assigned by type I transfer to the division of professional registration.

146 13. Wherever the laws, rules, or regulations of this state make reference to the  
147 division of professional registration of the department of economic development, such  
148 references shall be deemed to refer to the division of professional registration.

149 14. (1) The state board of nursing, board of pharmacy, Missouri dental board, state  
150 committee of psychologists, state board of chiropractic examiners, state board of optometry,  
151 Missouri board of occupational therapy, or state board of registration for the healing arts may  
152 individually or collectively enter into a contractual agreement with the department of health  
153 and senior services, a public institution of higher education, or a nonprofit entity for the  
154 purpose of collecting and analyzing workforce data from its licensees, registrants, or permit  
155 holders for future workforce planning and to assess the accessibility and availability of  
156 qualified health care services and practitioners in Missouri. The boards shall work  
157 collaboratively with other state governmental entities to ensure coordination and avoid  
158 duplication of efforts.

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

163 (3) Data collection shall be controlled and approved by the applicable state board  
164 conducting or requesting the collection. Notwithstanding the provisions of sections 324.010

165 and 334.001, the boards may release identifying data to the contractor to facilitate data  
166 analysis of the health care workforce including, but not limited to, geographic, demographic,  
167 and practice or professional characteristics of licensees. The state board shall not request or  
168 be authorized to collect income or other financial earnings data.

169 (4) Data collected under this subsection shall be deemed the property of the state  
170 board requesting the data. Data shall be maintained by the state board in accordance with  
171 chapter 610, provided that any information deemed closed or confidential under subsection 8  
172 of this section or any other provision of state law shall not be disclosed without consent of the  
173 applicable licensee or entity or as otherwise authorized by law. Data shall only be released in  
174 an aggregate form by geography, profession or professional specialization, or population  
175 characteristic in a manner that cannot be used to identify a specific individual or entity. Data  
176 suppression standards shall be addressed and established in the contractual agreement.

177 (5) Contractors shall maintain the security and confidentiality of data received or  
178 collected under this subsection and shall not use, disclose, or release any data without  
179 approval of the applicable state board. The contractual agreement between the applicable  
180 state board and contractor shall establish a data release and research review policy to include  
181 legal and institutional review board, or agency-equivalent, approval.

182 (6) Each board may promulgate rules subject to the provisions of this subsection and  
183 chapter 536 to effectuate and implement the workforce data collection and analysis authorized  
184 by this subsection. Any rule or portion of a rule, as that term is defined in section 536.010,  
185 that is created under the authority delegated in this section shall become effective only if it  
186 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section  
187 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with  
188 the general assembly under chapter 536 to review, to delay the effective date, or to disapprove  
189 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
190 authority and any rule proposed or adopted after August 28, 2016, shall be invalid and void.

**334.109. 1. A complainant patient or his or her representative and the  
2 complainant patient's or representative's attorney shall be entitled to attend all hearings  
3 of the state board of registration for the healing arts and any subsequent appeal from  
4 the state board of registration for the healing arts to the administrative hearing  
5 commission convened for the purpose of licensee investigation and discipline for the  
6 specific licensee under complaint. The complainant patient's or representative's  
7 attorney shall not be permitted to actively participate in such hearing or appeal.**

8 **2. The complainant patient or his or her representative shall be given an  
9 opportunity to give an oral or written victim impact statement in the presence of the  
10 licensee. If the licensee is not present at such hearing, the complainant patient's or  
11 representative's victim impact statement shall be communicated to the licensee in**

12 **writing, and the licensee shall certify to the state board of registration for the healing**  
13 **arts and the administrative hearing commission that the licensee has received and read**  
14 **the victim impact statement.**

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