

SECOND REGULAR SESSION

# HOUSE BILL NO. 2392

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCCANN BEATTY.

4597H.021

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 324.001 and 324.017, RSMo, and to enact in lieu thereof four new sections relating to public access to information about certain licensees.

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

Section A. Sections 324.001 and 324.017, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 324.001, 324.017, 328.151, and 329.141, to read as follows:

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

(1) "Department", the department of insurance, financial institutions and professional registration;

(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 insurance, financial institutions and professional registration 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

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.

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

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

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

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

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

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

69 8. All educational transcripts, test scores, complaints, investigatory reports, and  
70 information pertaining to any person who is an applicant or licensee of any agency assigned to  
71 the division of professional registration by statute or by the department are confidential and may  
72 not be disclosed to the public or any member of the public, except with the written consent of  
73 the person whose records are involved. The agency which possesses the records or information  
74 shall disclose the records or information if the person whose records or information is involved  
75 has consented to the disclosure. Each agency is entitled to the attorney-client privilege and  
76 work-product privilege to the same extent as any other person. Provided, however, that any  
77 board may disclose confidential information without the consent of the person involved in the  
78 course of voluntary interstate exchange of information, or in the course of any litigation  
79 concerning that person, or pursuant to a lawful request, or to other administrative or law  
80 enforcement agencies acting within the scope of their statutory authority. **In addition, the**  
81 **board of cosmetology and barber examiners shall disclose confidential information without**  
82 **the consent of the person involved if disclosure to the public is required under section**  
83 **328.151 or 329.141.** Information regarding identity, including names and addresses, registration,  
84 and currency of the license of the persons possessing licenses to engage in a professional  
85 occupation and the names and addresses of applicants for such licenses is not confidential  
86 information.

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

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

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

95 11. (1) The following boards and commissions are assigned by specific type transfers  
96 to the division of professional registration: Missouri state board of accountancy, chapter 326;  
97 board of cosmetology and barber examiners, chapters 328 and 329; Missouri board for architects,  
98 professional engineers, professional land surveyors and landscape architects, chapter 327;  
99 Missouri state board of chiropractic examiners, chapter 331; state board of registration for the  
100 healing arts, chapter 334; Missouri dental board, chapter 332; state board of embalmers and  
101 funeral directors, chapter 333; state board of optometry, chapter 336; Missouri state board of  
102 nursing, chapter 335; board of pharmacy, chapter 338; state board of podiatric medicine, chapter  
103 330; Missouri real estate appraisers commission, chapter 339; and Missouri veterinary medical  
104 board, chapter 340. The governor shall appoint members of these boards by and with the advice  
105 and consent of the senate.

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

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

120 (4) "Board personnel", as used in this section or chapters 317, 326, 327, 328, 329, 330,  
121 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall mean personnel whose functions  
122 and responsibilities are in areas not related to the clerical duties involving the issuance and  
123 renewal of licenses, to the collecting and accounting for moneys, or to financial management  
124 relating to issuance and renewal of licenses; specifically included are executive secretaries (or

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

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

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

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

146 14. (1) The state board of nursing, board of pharmacy, Missouri dental board, state  
147 committee of psychologists, state board of chiropractic examiners, state board of optometry,  
148 Missouri board of occupational therapy, or state board of registration for the healing arts may  
149 individually or collectively enter into a contractual agreement with the department of health and  
150 senior services, a public institution of higher education, or a nonprofit entity for the purpose of  
151 collecting and analyzing workforce data from its licensees, registrants, or permit holders for  
152 future workforce planning and to assess the accessibility and availability of qualified health care  
153 services and practitioners in Missouri. The boards shall work collaboratively with other state  
154 governmental entities to ensure coordination and avoid duplication of efforts.

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

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

161 334.001, the boards may release identifying data to the contractor to facilitate data analysis of  
162 the health care workforce including, but not limited to, geographic, demographic, and practice  
163 or professional characteristics of licensees. The state board shall not request or be authorized  
164 to collect income or other financial earnings data.

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

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

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

324.017. 1. Contrary provisions of the law notwithstanding, no complaint, investigatory  
2 report, or information received from any source must be disclosed prior to its review by the  
3 appropriate agency.

4 2. At its discretion an agency may disclose complaints, completed investigatory reports,  
5 and information obtained from state administrative and law enforcement agencies to a licensee  
6 or license applicant in order to further an investigation or to facilitate settlement negotiations.

7 3. Information obtained from a federal administrative or law enforcement agency shall  
8 be disclosed only after the agency has obtained written consent to the disclosure from the federal  
9 administrative or law enforcement agency.

10           4. At its discretion an agency may disclose complaints and investigatory reports in the  
11 course of a voluntary interstate exchange of information, or in the course of any litigation  
12 concerning a licensee or license applicant, or pursuant to a lawful request, or to other state or  
13 federal administrative or law enforcement agencies.

14           5. Except as disclosure is specifically provided above and in section 610.021,  
15 deliberations, votes, or minutes of closed proceedings of agencies shall not be subject to  
16 disclosure or discovery.

17           **6. Nothing in this section shall prevent disclosure of complaints and investigatory**  
18 **reports to the public as required under sections 328.151 and 329.141.**

**328.151. 1. All completed investigatory reports and complaints filed by the board**  
2 **under section 328.150 that have resulted in disciplinary action by the board against the**  
3 **persons named in the complaints or investigatory reports shall be open to the public for**  
4 **inspection and copying as set forth in sections 610.023 to 610.026 unless the board is**  
5 **specifically prohibited from publicly disclosing the information under chapter 610.**

6           **2. All records or reports relating to inspections conducted by the board shall be**  
7 **open to the public for inspection and copying as set forth in sections 610.023 to 610.026**  
8 **unless the board is specifically prohibited from publicly disclosing the information under**  
9 **chapter 610.**

**329.141. 1. All completed investigatory reports and complaints filed by the board**  
2 **under section 329.140 that have resulted in disciplinary action by the board against the**  
3 **persons named in the complaints or investigatory reports shall be open to the public for**  
4 **inspection and copying as set forth in sections 610.023 to 610.026 unless the board is**  
5 **specifically prohibited from publicly disclosing the information under chapter 610.**

6           **2. All records or reports relating to inspections conducted by the board shall be**  
7 **open to the public for inspection and copying as set forth in sections 610.023 to 610.026**  
8 **unless the board is specifically prohibited from publicly disclosing the information under**  
9 **chapter 610.**

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