

FIRST REGULAR SESSION

# HOUSE BILL NO. 380

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

0189H.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 physician discipline procedures.

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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Section A. Section 324.001, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 324.001 and 334.109, to read as follows: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 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 renewal date in effect at the time such new renewal date is specified next occurs. Each board or

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 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 to include verifying if the applicant has submitted all  
38 required documentation and that the documentation is legible. It does not include any  
39 discretionary authority with regard to the original review of an applicant's qualifications for  
40 licensure or certification, or the subsequent review of licensee's or certificate holder's  
41 qualifications, or any disciplinary action contemplated against the licensee or certificate holder.  
42 The division may develop and implement microfilming systems and automated or manual  
43 management information systems.

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

50 6. For accounting purposes, the appropriation to the division and to the office of  
51 administration for the payment of rent for quarters provided for the division shall be made from  
52 the "Professional Registration Fees Fund", which is hereby created, and is to be used solely for  
53 the purpose defined in subsection 5 of this section. The fund shall consist of moneys deposited

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

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

71         8. All educational transcripts, test scores, complaints, investigatory reports, and  
72 information pertaining to any person who is an applicant or licensee of any agency assigned to  
73 the division of professional registration by statute or by the department are confidential and may  
74 not be disclosed to the public or any member of the public, except with the written consent of  
75 the person whose records are involved. The agency which possesses the records or information  
76 shall disclose the records or information if the person whose records or information is involved  
77 has consented to the disclosure. Each agency is entitled to the attorney-client privilege and  
78 work-product privilege to the same extent as any other person. Provided, however, that any  
79 board may disclose confidential information without the consent of the person involved in the  
80 course of voluntary interstate exchange of information, or in the course of any litigation  
81 concerning that person, or pursuant to a lawful request, or to other administrative or law  
82 enforcement agencies acting within the scope of their statutory authority. Information regarding  
83 identity, including names and addresses, registration, and currency of the license of the persons  
84 possessing licenses to engage in a professional occupation and the names and addresses of  
85 applicants for such licenses is not confidential information. **The provisions of this subsection**  
86 **shall not apply to any confidential information disclosed to a complainant patient, or his**  
87 **or her representative, and the complainant patient's or representative's attorney when such**  
88 **persons are attending a 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 balance  
95 of any agency assigned to the division of professional registration is reasonably expected to  
96 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 architects,  
100 professional engineers, professional land surveyors and landscape architects, chapter 327;  
101 Missouri state board of chiropractic examiners, chapter 331; state board of registration for the  
102 healing arts, chapter 334; Missouri dental board, chapter 332; state board of embalmers and  
103 funeral directors, chapter 333; state board of optometry, chapter 336; Missouri state board of  
104 nursing, chapter 335; board of pharmacy, chapter 338; state board of podiatric medicine, chapter  
105 330; Missouri real estate appraisers commission, chapter 339; and Missouri veterinary medical  
106 board, chapter 340. The governor shall appoint members of these boards by and with the advice  
107 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 services  
113 from professional associations or others as required by the boards or commissions on contract.  
114 Nothing herein shall be construed to affect the power of a board or commission to expend its  
115 funds as appropriated. However, the division shall review the expense vouchers of each board.  
116 The results of such review shall be submitted to the board reviewed and to the house and senate  
117 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 provided  
120 in the Reorganization Act of 1974, and those relating to the allocation and assignment of space,  
121 personnel other than board personnel, and equipment.

122           (4) "Board personnel", as used in this section or chapters 317, 326, 327, 328, 329, 330,  
123 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall mean personnel whose functions  
124 and responsibilities are in areas not related to the clerical duties involving the issuance and

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

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

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

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

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

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

161 (3) Data collection shall be controlled and approved by the applicable state board  
162 conducting or requesting the collection. Notwithstanding the provisions of sections 324.010 and  
163 334.001, the boards may release identifying data to the contractor to facilitate data analysis of  
164 the health care workforce including, but not limited to, geographic, demographic, and practice  
165 or professional characteristics of licensees. The state board shall not request or be authorized  
166 to collect income or other financial earnings data.

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

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

180 (6) Each board may promulgate rules subject to the provisions of this subsection and  
181 chapter 536 to effectuate and implement the workforce data collection and analysis authorized  
182 by this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that  
183 is created under the authority delegated in this section shall become effective only if it complies  
184 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.  
185 This section and chapter 536 are nonseverable and if any of the powers vested with the general  
186 assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a  
187 rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
188 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 or any subsequent appeal from the  
4 state board of registration for the healing arts to the administrative hearing commission  
5 convened for the purpose of licensee investigation and discipline. The attorney of the  
6 complainant patient, or his or her representative, shall not be permitted to actively  
7 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 **respondent. If the respondent is not present at such hearing, the complainant patient's or**  
11 **representative's victim impact statement shall be communicated to the respondent in**  
12 **writing and the respondent shall certify to the state board of registration for the healing**  
13 **arts and the administrative hearing commission that the respondent has received and read**  
14 **the victim impact statement.**

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