

SECOND REGULAR SESSION

HOUSE BILL NO. 1647

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RIBACK WILSON (25) (Sponsor),
CAMPBELL AND HOLAND (Co-sponsors).

Read 1st time March 9, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4909L.01I

AN ACT

To repeal sections 196.866, 197.210, 315.015, 344.030, 344.040, and 701.046, RSMo, and to enact in lieu thereof eight new sections relating to licensing and permit fees.

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

Section A. Sections 196.866, 197.210, 315.015, 344.030, 344.040, and 701.046, RSMo,
2 are repealed and eight new sections enacted in lieu thereof, to be known as sections 190.539,
3 196.866, 197.210, 315.015, 344.030, 344.040, 344.106, and 701.046, to read as follows:

190.539. 1. The department of health and senior services shall promulgate rules
2 **to establish a schedule of fees to be paid by an applicant for a specific license or**
3 **accreditation under sections 190.001 to 190.250 and 190.525 to 190.537. Any rule or**
4 **portion of a rule, as that term is defined in section 536.010, RSMo, that is created under**
5 **the authority delegated in this section shall become effective only if it complies with and**
6 **is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
7 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers**
8 **vested with the general assembly under chapter 536, RSMo, to review, to delay the effective**
9 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
10 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2004,**
11 **shall be invalid and void.**

12 **2. All fees provided for in this section shall be deposited in the Missouri public**
13 **health services fund established in section 192.900, RSMo. Notwithstanding the provisions**
14 **of section 33.080, RSMo, to the contrary, money in the fund shall not be transferred and**

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

15 **placed to the credit of general revenue at the end of the biennium, but shall be used upon**
16 **appropriation by the general assembly for the purpose of carrying out the provisions of**
17 **sections 190.001 to 190.250 and 190.525 to 190.537.**

196.866. 1. Every person, firm, association or corporation, before engaging in the
2 business of manufacturing or freezing ice cream, mellorine, frozen dessert products or any other
3 product defined in sections 196.851 to 196.895, shall first obtain a license from the director of
4 the department of health and senior services of the state of Missouri. A license shall be obtained
5 for each plant or place of business where ice cream, ice cream mix, ice milk, sherbet, frozen
6 malt, ice milk mix, mellorine, edible fat frozen dessert or ices are manufactured or frozen.
7 Hotels, motels, restaurants, boardinghouses, or other concerns or agents which shall manufacture
8 or freeze ice cream, or related frozen food products defined in sections 196.851 to 196.895 for
9 the use of their patrons, guests, or servants, shall be required to take out the license herein
10 provided for; provided, that nothing in this section shall apply to private homes, hospitals,
11 churches, or fraternal organizations manufacturing such products for their own use or to retailers
12 dealing in ice cream or frozen dessert products received in the final frozen form from a licensed
13 manufacturer.

14 2. Applications for such licenses, both frozen dessert and mellorine, shall be
15 accompanied by a [statutory] fee as follows: For each plant producing annually not in excess of
16 five thousand gallons, ten dollars; in excess of five thousand gallons and not in excess of fifteen
17 thousand gallons, fifteen dollars; in excess of fifteen thousand gallons and not in excess of
18 twenty-five thousand gallons, twenty-five dollars; in excess of twenty-five thousand gallons and
19 not in excess of fifty thousand gallons, fifty dollars; in excess of fifty thousand gallons and not
20 in excess of one hundred thousand gallons, seventy-five dollars; in excess of one hundred
21 thousand gallons and not in excess of two hundred thousand gallons, one hundred dollars; in
22 excess of two hundred thousand gallons and not in excess of four hundred thousand gallons, one
23 hundred twenty-five dollars; over four hundred thousand gallons, one hundred fifty dollars, and
24 shall be made to the director of the department of health and senior services, upon such forms
25 and shall show such information as may be demanded by the department of health and senior
26 services, and the said director of the department of health and senior services, upon receipt of
27 application for such license, shall cause to be investigated the equipment and the sanitary
28 conditions of the plant or place of business for which the license is applied. **Effective January**
29 **1, 2005, the department is authorized to establish fees by rules promulgated under section**
30 **536.021, RSMo. The department shall set fees that reflect the cost and expense of**
31 **administrating sections 196.851 to 196.895. Any rule or portion of a rule, as that term is**
32 **defined in section 536.010, RSMo, that is created under the authority delegated in this**
33 **section shall become effective only if it complies with and is subject to all of the provisions**

34 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter**
35 **536, RSMo, are nonseverable and if any of the powers vested with the general assembly**
36 **under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul**
37 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority and**
38 **any rule proposed or adopted after August 28, 2004, shall be invalid and void.** If the
39 condition of the plant or place of business is found to be satisfactory, a license shall be issued
40 by the director of the department of health and senior services to such applicant.

41 3. Each license so issued shall expire one year following the date of issuance. All
42 licenses for plants or places of business, when the manufacture of ice cream, ice cream mix, ice
43 milk, sherbets, or ices is continued after the expiration of such licenses, shall be renewed
44 annually.

45 4. The director of the department of health and senior services may withhold and refuse
46 to issue a license for any plant or place of business that has not been conducted or is not prepared
47 to be conducted in accordance with the requirements of sections 196.851 to 196.895 or any rules
48 issued hereunder.

49
50 The director of the department of health and senior services shall have the power to revoke any
51 license issued under sections 196.851 to 196.895 whenever it is determined by him that any of
52 the provisions of sections 196.851 to 196.895 have been violated. Any person, firm, association
53 or corporation, whose license has been so revoked, shall discontinue operation of the business
54 for which the license was issued until such time as the provisions of sections 196.851 to 196.895
55 have been complied with and a new license granted by the director of the department of health
56 and senior services. Before revoking any such license, the director of the department of health
57 and senior services shall give written notice to the licensee affected, stating that he contemplates
58 revocation of the same and giving his reasons therefor. Said notice shall appoint a time and
59 place for hearing and shall be mailed by registered mail to the licensee at least ten days before
60 the date set for the hearing or personal service rendered. The licensee may present to the director
61 of the department of health and senior services such evidence as may have a bearing on the case,
62 and, after hearing of the testimony, the director of the department of health and senior services
63 shall decide the question in such manner as to him appears just and right.

64 5. Any licensee who feels aggrieved at the decision of the director of the department of
65 health and senior services may appeal from said decision within sixty days by writ of certiorari
66 to the circuit court of the county in which such person resides or in case of a firm, association
67 or corporation, the county in which is located its principal place of business.

68 6. All fees collected under this section shall be deposited in the state treasury **to the**
69 **credit of the Missouri public health services fund as established in section 192.900, RSMo,**

70 subject to appropriation by the general assembly.

197.210. 1. Application for a license shall be made to the department **of health and senior services** upon forms provided by the department and shall contain such information as the department **of health and senior services** may require. The department of health and senior services may require affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under the provisions of sections 197.200 to 197.240.

2. Each application for a license, except applications from governmental units, shall be accompanied by an annual license fee [of two hundred dollars. All license fees shall be deposited in the state treasury to the credit of general revenue]. **The department of health and senior services shall promulgate rules to establish a schedule of fees to be paid by an applicant. The schedule of fees shall be sufficient to assure funding of the licensure program. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.**

3. All fees provided for in this section shall be deposited in the Missouri public health services fund as established in section 192.900, RSMo. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money in the fund shall not be transferred and placed to the credit of general revenue at the end of the biennium, but shall be used upon appropriation by the general assembly for the purpose of carrying out the provisions of sections 197.200 to 197.240.

315.015. 1. The license fee shall be fifty dollars for each lodging establishment, plus two dollars per guest room for each guest room above ten and through twenty, plus one dollar per guest room for each guest room above twenty. **Effective January 1, 2005, the department is authorized to establish the level of fees by rules promulgated under section 536.021, RSMo. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held**

11 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
12 **after August 28, 2004, shall be invalid and void. A license shall be obtained for each**
13 **lodging establishment. To obtain such license an application provided by the department**
14 **shall be completed and shall be accompanied by a current-approved inspection report and**
15 **a licensing fee in the amount established by the department. Such application shall include**
16 **such information as may be required by the department. Such application, current-**
17 **approved inspection report, and licensing fee shall be submitted to the department prior**
18 **to a license being issued to the lodging establishment owner.**

19 2. [After the] **Every** lodging establishment [has been] **shall be** inspected by the
20 department [and approved for licensing, notice of the license fee shall be issued to the owner]
21 **annually. If the lodging establishment meets the minimum sanitation, construction, and**
22 **safety standards as established in the regulations the lodging establishment shall receive**
23 **a current-approved inspection report which shall accompany the application for a license.**
24 Upon [subsequent payment of such] **receipt of the completed application, current-approved**
25 **inspection report, and licensing** fee, the director of the department [of health and senior
26 services] shall issue a license which shall be kept [properly framed and] in a conspicuous place
27 at the lodging establishment. The department director may **deny, revoke, suspend, or place on**
28 **probation** the license as prescribed in subsection 1 of section 315.041, when the law or
29 applicable [code] **regulation** is not held in compliance.

30 3. Each license shall expire on the [thirty-first day of May] **thirtieth day of September**
31 **next following its issuance. All fees collected under the provisions of sections 315.005 to**
32 **315.065 shall be paid to the director of revenue and deposited by him in the state treasury to the**
33 **credit of the [general revenue fund] Missouri public health services fund as established in**
34 **section 192.900, RSMo. Such license shall be renewed annually upon the same terms and**
35 **conditions as required for an original license.**

344.030. 1. An applicant for an initial license shall file a completed application with the
2 board on a form provided by the board, accompanied by an application fee [of one hundred
3 dollars payable to the director of revenue]. **The board shall set the amount of the fee for**
4 **application by rules promulgated under section 536.021, RSMo. The schedule of fees shall**
5 **be sufficient to assure funding of the licensure program. Any rule or portion of a rule, as**
6 **that term is defined in section 536.010, RSMo, that is created under the authority delegated**
7 **in this section shall become effective only if it complies with and is subject to all of the**
8 **provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section**
9 **and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general**
10 **assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove**
11 **and annul a rule are subsequently held unconstitutional, then the grant of rulemaking**

12 **authority and any rule proposed or adopted after August 28, 2004, shall be invalid and**
13 **void.** Information provided in the application shall be given under oath subject to the penalties
14 for making a false affidavit.

15 2. No initial license shall be issued to a person as a nursing home administrator unless:

16 (1) The applicant provides the board satisfactory proof that the applicant is twenty-one
17 years of age or over, of good moral character and a high school graduate or equivalent;

18 (2) The applicant provides the board satisfactory proof that the applicant has had a
19 minimum of three years' experience in health care administration or two years of postsecondary
20 education in health care administration or has satisfactorily completed a course of instruction and
21 training prescribed by the board, which includes instruction in the needs properly to be served
22 by nursing homes, the protection of the interests of residents therein, and the elements of good
23 nursing home administration, or has presented evidence satisfactory to the board of sufficient
24 education, training, or experience in the foregoing fields to administer, supervise and manage
25 a nursing home; and

26 (3) The applicant passes the written examination administered by the board. If an
27 applicant fails to make a passing grade on the examination such applicant may make application
28 for reexamination on a form furnished by the board and may be retested at the next regularly
29 scheduled examination. If an applicant fails the examination a third time, the applicant shall be
30 required to complete a course of instruction prescribed and approved by the board before the
31 applicant may reapply for examination. There shall be a separate, nonrefundable fee for each
32 examination. The board shall set the amount of the fee for examination by rules and regulations
33 promulgated pursuant to section 536.021, RSMo. The fee shall be set at a level to produce
34 revenue which shall not substantially exceed the cost and expense of administering the
35 examination.

36 3. The board may issue a license through reciprocity to any person who is regularly
37 licensed as a nursing home administrator in any other state, territory, or the District of Columbia,
38 if the regulations for securing such license are equivalent to those required in the state of
39 Missouri. However, no license by reciprocity shall be issued until the applicant passes a special
40 examination approved by the board, which will examine the applicant's knowledge of specific
41 provisions of Missouri statutes and regulations pertaining to nursing homes. The applicant shall
42 furnish satisfactory evidence that such applicant is of good moral character and has acted in the
43 capacity of a nursing home administrator in such state, territory, or the District of Columbia, at
44 least one year after the securing of the license. The board, in its discretion, may enter into
45 written reciprocal agreements pursuant to this section with other states which have equivalent
46 laws and regulations.

47 4. Nothing in sections 344.010 to 344.100, or the rules or regulations thereunder shall

48 be construed to require an applicant for a license as a nursing home administrator, who is
49 employed by an institution listed and certified by the Commission for Accreditation of Christian
50 Science Nursing Organizations/Facilities, Inc., to administer institutions certified by such
51 commission for the care and treatment of the sick in accordance with the creed or tenets of a
52 recognized church or religious denomination, to demonstrate proficiency in any techniques or
53 to meet any educational qualifications or standards not in accord with the remedial care and
54 treatment provided in such institutions. The applicant's license shall be endorsed to confine the
55 applicant's practice to such institutions.

56 5. The board may issue a temporary emergency license for a period not to exceed ninety
57 days to a person twenty-one years of age or over, of good moral character and a high school
58 graduate or equivalent to serve as an acting nursing home administrator, provided such person
59 is replacing a licensed nursing home administrator who has died, has been removed or has
60 vacated the nursing home administrator's position. No temporary emergency license may be
61 issued to a person who has had a nursing home administrator's license denied, suspended or
62 revoked. A temporary emergency license may be renewed for one additional ninety-day period
63 upon a showing that the person seeking the renewal of a temporary emergency license meets the
64 qualifications for licensure and has filed an application for a regular license, accompanied by the
65 application fee, and the examination has not yet been given. No temporary emergency license
66 may be renewed more than one time.

344.040. 1. Every license issued under this chapter shall expire on June thirtieth of the
2 year of issuance and each year thereafter. Licensees seeking renewal shall, during the month of
3 May of each year, file an application for renewal on forms furnished by the board, which shall
4 include evidence satisfactory to the board of completion of the approved continuing education
5 hours required by the board, and shall be accompanied by a renewal fee [of fifty dollars payable
6 to the director of revenue]. **The board shall set the amount of the fee for application by rules
7 promulgated under section 536.021, RSMo. The schedule of fees shall be sufficient to
8 assure funding of the licensure program. Any rule or portion of a rule, as that term is
9 defined in section 536.010, RSMo, that is created under the authority delegated in this
10 section shall become effective only if it complies with and is subject to all of the provisions
11 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
12 536, RSMo, are nonseverable and if any of the powers vested with the general assembly
13 under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul
14 a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
15 any rule proposed or adopted after August 28, 2004, shall be invalid and void.**

16 2. Upon receipt of an incomplete application for renewal, the board shall grant the
17 applicant a temporary permit which shall be in effect for thirty days. The applicant is required

18 to submit the required documentation or fee within the thirty-day period, or the board may refuse
19 to renew his application. The thirty-day period can be extended for good cause shown for an
20 additional thirty days. Upon receipt of the approved continuing education credits or other
21 required documentation or fee within the appropriate time period, the board shall issue an annual
22 license.

23 3. The board shall renew the license of an applicant who has met all of the requirements
24 for renewal.

25 4. As a requirement for renewal of license, the board may require not more than
26 forty-eight clock hours of continuing education a year. The continuing education provided for
27 under this section shall be approved by the board. There shall be a separate, nonrefundable fee
28 for each single offering provider. The board shall set the amount of fee for any single offering
29 provided by rules and regulations promulgated pursuant to section 536.021, RSMo. The fee shall
30 be set at a level to produce revenue which shall not substantially exceed the cost and expense in
31 administering and reviewing any single offering.

32 5. By April first of each year, the board shall mail an application for renewal of license
33 to every person for whom a license was issued or renewed during the current year. The applicant
34 must submit such information as will enable the board to determine if the applicant's license
35 should be renewed. Information provided in the application shall be given under oath.

36 6. Any licensee who fails to apply to renew his license by June thirtieth may be
37 relicensed by the board if he meets the requirements set forth by the board pursuant to sections
38 344.010 to 344.100 and pays the [fifty-dollar] renewal fee, plus a penalty of twenty-five dollars.
39 No action shall be taken by the board in addition to a penalty of twenty-five dollars imposed by
40 this section against any such licensee whose license has not expired for a period of more than
41 two months, and who has had no action in the preceding five years taken against them by the
42 board, and who has met all other licensure requirements by June thirtieth; provided, however,
43 that nothing in this section shall prevent the board from taking any other disciplinary action
44 against a licensee if there shall exist a cause for discipline pursuant to section 344.050. A person
45 whose license has expired for a period of more than twelve months must meet the requirements
46 set out in section 344.030 for initial licensure.

**344.106. All fees provided for in this chapter shall be deposited in the board of
2 nursing home administrators fund. Notwithstanding the provisions of section 33.080,
3 RSMo, to the contrary, money in the fund shall not be transferred and placed to the credit
4 of general revenue at the end of the biennium, but shall be used upon appropriation by the
5 general assembly for the purpose of carrying out the provisions of this chapter.**

701.046. Except as otherwise provided in section 701.031, no person may, on or after
2 September 1, 1995, construct or make a major modification or major repair to an on-site sewage

3 disposal system without first notifying the city, county or department and completing an
4 application, upon a form provided by the department, and submitting a fee in the amount
5 established by the city, county or department. The fee shall be set at an amount no greater than
6 that necessary to cover the cost to implement the state standard for on-site sewage disposal
7 systems and the registration of contractors. For areas of the state where the department is
8 enforcing the state standard or registering contractors, the department shall establish the fee[, by
9 rule, at an amount not greater than ninety dollars] **by rules promulgated under section 536.021,**
10 **RSMo. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that**
11 **is created under the authority delegated in this section shall become effective only if it**
12 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
13 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
14 **and if any of the powers vested with the general assembly under chapter 536, RSMo, to**
15 **review, to delay the effective date, or to disapprove and annul a rule are subsequently held**
16 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
17 **after August 28, 2004, shall be invalid and void.** The department may charge an additional
18 fee, as necessary, to cover the expenses of training those contractors electing to perform the
19 percolation tests. The application form shall require such information necessary to show that the
20 on-site sewage disposal system will comply with the state standard. Such fees, when collected
21 by the department, shall be deposited in the state treasury to the credit of the Missouri public
22 health services fund. The department shall provide technical assistance regarding the type and
23 location of the system to be installed when processing applications received under sections
24 701.046 to 701.048 and 701.050. Fees collected by the department shall be deposited in the
25 Missouri public health services fund created in section 192.900, RSMo, and shall be used to
26 implement sections 701.025 to 701.059 and for no other purpose.