

SECOND REGULAR SESSION

# HOUSE BILL NO. 1666

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BEHNEN.

Read 1st time February 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

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### AN ACT

To repeal sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, and 344.105, RSMo, and to enact in lieu thereof nine new sections relating to licensing of nursing home administrators.

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

Section A. Sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, 2 and 344.105, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as 3 sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, 344.105, and 344.108, 4 to read as follows:

344.020. No person shall act or serve in the capacity of a nursing home administrator 2 without first procuring a license from the Missouri board of nursing home administrators as 3 provided in sections 344.010 to [344.100] **344.108**. The board may issue a separate license to 4 administrators of residential care facilities II, as defined in section 198.006, RSMo. Any 5 individual who receives a license to operate a residential care facility II is not thereby authorized 6 to operate any intermediate care facility or skilled nursing facility as those terms are defined in 7 section 198.006, RSMo.

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] **department of health and senior services**. 4 Information provided in the application shall be given under oath subject to the penalties for 5 making a false affidavit.

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.

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

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

9           (2) The applicant provides the board satisfactory proof that the applicant has had a  
10 minimum of three years' experience in health care administration or two years of postsecondary  
11 education in health care administration or has satisfactorily completed a course of instruction and  
12 training prescribed by the board, which includes instruction in the needs properly to be served  
13 by nursing homes, the protection of the interests of residents therein, and the elements of good  
14 nursing home administration, or has presented evidence satisfactory to the board of sufficient  
15 education, training, or experience in the foregoing fields to administer, supervise and manage  
16 a nursing home; and

17           (3) The applicant passes the [written examination] **examinations** administered by the  
18 board. If an applicant fails to make a passing grade on [the examination] **either of the**  
19 **examinations** such applicant may make application for reexamination on a form furnished by  
20 the board and may be retested [at the next regularly scheduled examination]. If an applicant fails  
21 [the examination] **either of the examinations** a third time, the applicant shall be required to  
22 complete a course of instruction prescribed and approved by the board [before the applicant may  
23 reapply for examination]. **After completion of the board-prescribed course of instruction,**  
24 **the applicant may reapply for board-administered examination. No applicant shall be**  
25 **licensed by the board after the applicant's third licensure examination failure unless the**  
26 **applicant successfully completes the board-prescribed course of instruction and passes**  
27 **board-administered examinations. With regard to any nationally certified examination**  
28 **required for licensure, no examination scores from other states shall be recognized by the**  
29 **board after the applicant has failed his or her third attempt at examination.** There shall be  
30 a separate, nonrefundable fee for each examination. The board shall set the amount of the fee  
31 for examination by rules and regulations promulgated pursuant to section 536.021, RSMo. The  
32 fee shall be set at a level to produce revenue which shall not substantially exceed the cost and  
33 expense of administering the examination.

34           3. The board may issue a license through reciprocity to any person who is regularly  
35 licensed as a nursing home administrator in any other state, territory, or the District of Columbia,  
36 if the regulations for securing such license are equivalent to those required in the state of  
37 Missouri. However, no license by reciprocity shall be issued until the applicant passes a special  
38 examination approved by the board, which will examine the applicant's knowledge of specific  
39 provisions of Missouri statutes and regulations pertaining to nursing homes. The applicant shall  
40 furnish satisfactory evidence that such applicant is of good moral character and has acted in the  
41 capacity of a nursing home administrator in such state, territory, or the District of Columbia, at

42 least one year after the securing of the license. The board, in its discretion, may enter into  
43 written reciprocal agreements pursuant to this section with other states which have equivalent  
44 laws and regulations.

45 4. Nothing in sections 344.010 to [344.100] **344.108**, or the rules or regulations  
46 thereunder shall be construed to require an applicant for a license as a nursing home  
47 administrator, who is employed by an institution listed and certified by the Commission for  
48 Accreditation of Christian Science Nursing Organizations/Facilities, Inc., to administer  
49 institutions certified by such commission for the care and treatment of the sick in accordance  
50 with the creed or tenets of a recognized church or religious denomination, to demonstrate  
51 proficiency in any techniques or to meet any educational qualifications or standards not in accord  
52 with the remedial care and treatment provided in such institutions. The applicant's license shall  
53 be endorsed to confine the applicant's practice to such institutions.

54 5. The board may issue a temporary emergency license for a period not to exceed ninety  
55 days to a person twenty-one years of age or over, of good moral character and a high school  
56 graduate or equivalent to serve as an acting nursing home administrator, provided such person  
57 is replacing a licensed nursing home administrator who has died, has been removed or has  
58 vacated the nursing home administrator's position. No temporary emergency license may be  
59 issued to a person who has had a nursing home administrator's license denied, suspended or  
60 revoked. A temporary emergency license may be renewed for one additional ninety-day period  
61 upon a showing that the person seeking the renewal of a temporary emergency license meets the  
62 qualifications for licensure and has filed an application for a regular license, accompanied by the  
63 application fee, and the examination [has not yet been given] **results have not been received**  
64 **by the board**. No temporary emergency license 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 following the year of issuance and every other year thereafter, provided that licenses issued  
3 or renewed during the year 2006 may be issued or renewed by the board for a period of either one  
4 or two years, as provided by rule. Licensees seeking renewal shall, during the month of May of  
5 the year of renewal, file an application for renewal on forms furnished by the board, which shall  
6 include evidence satisfactory to the board of completion of the approved continuing education  
7 hours required by the board, and shall be accompanied by a renewal fee as provided by rule  
8 payable to the department of health and senior services.

9 2. Upon receipt of an incomplete application for renewal, the board shall grant the  
10 applicant a temporary permit which shall be in effect for thirty days. The applicant is required  
11 to submit the required documentation or fee within the thirty-day period, or the board may refuse  
12 to renew his application. The thirty-day period can be extended for good cause shown for an

13 additional thirty days. Upon receipt of the approved continuing education credits or other  
14 required documentation or fee within the appropriate time period, the board shall issue a license.

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

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

24 5. By April first of each year, the board shall mail an application for renewal of license  
25 to every person whose license shall be renewed during the current year. The applicant must  
26 submit such information as will enable the board to determine if the applicant's license should  
27 be renewed. Information provided in the application shall be given under oath.

28 6. Any licensee who fails to apply to renew his license by June thirtieth of the licensee's  
29 year of renewal may be relicensed by the board if he meets the requirements set forth by the  
30 board pursuant to sections 344.010 to [344.100] **344.108** and pays the renewal fee required by  
31 rule, plus a penalty of twenty-five dollars. No action shall be taken by the board in addition to  
32 a penalty of twenty-five dollars imposed by this section against any such licensee whose license  
33 has not expired for a period of more than two months, and who has had no action in the  
34 preceding five years taken against them by the board, and who has met all other licensure  
35 requirements by June thirtieth of the year of renewal; provided, however, that nothing in this  
36 section shall prevent the board from taking any other disciplinary action against a licensee if  
37 there shall exist a cause for discipline pursuant to section 344.050. A person whose license has  
38 expired for a period of more than twelve months must meet the requirements set out in section  
39 344.030 for initial licensure.

344.050. 1. The board may refuse to issue or renew any certificate of registration or  
2 authority, permit or license required pursuant to this chapter for one or any combination of  
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing of  
4 the reasons for the refusal and shall advise the applicant of [his] **the applicant's** right to file a  
5 complaint with the administrative hearing commission as provided by chapter 621, RSMo. **As**  
6 **an alternative to refusal to issue or renew any certificate, registration, or authority, permit**  
7 **or license, the board may, at its discretion, issue a license which is subject to probation for**  
8 **any one or any combination of causes stated in subsection 2 of this section. The board's**  
9 **order of probation shall contain a statement of the terms and conditions of the probation**

10 **imposed, the basis therefore, the date such action shall become effective, and a statement**  
11 **that the applicant has thirty days to request in writing a hearing before the administrative**  
12 **hearing commission. If no written request for a hearing is received by the administrative**  
13 **hearing commission within the thirty-day period, the right to seek review of the board's**  
14 **decision shall be considered waived.**

15         2. The board may cause a complaint to be filed with the administrative hearing  
16 commission as provided by chapter 621, RSMo, against any holder of any certificate of  
17 registration or authority, permit or license required by this chapter or any person who has failed  
18 to renew or has surrendered his certificate of registration or authority, permit or license for any  
19 one or any combination of the following causes:

20         (1) Use or unlawful possession of any controlled substance, as defined in chapter 195,  
21 RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the  
22 work of any profession licensed or regulated by this chapter;

23         (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
24 or nolo contendere, pursuant to criminal prosecution under the laws of any state or of the United  
25 States, for any offense reasonably related to the qualifications, functions or duties of any  
26 profession licensed or regulated under this chapter, for any offense an essential element of which  
27 is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether  
28 or not sentence is imposed;

29         (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of  
30 registration or authority, permit or license issued pursuant to this chapter or in obtaining  
31 permission to take any examination given or required pursuant to this chapter;

32         (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by  
33 fraud, deception or misrepresentation;

34         (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty  
35 in the performance of the functions or duties of any profession licensed or regulated by this  
36 chapter;

37         (6) Violation of, or assisting or enabling any person to violate, any provision of this  
38 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

39         (7) **Violation of, or assisting or enabling any person to violate, any provision of**  
40 **chapter 198, RSMo, or any lawful rule or regulation promulgated thereunder;**

41         (8) Impersonation of any person holding a certificate of registration or authority, permit  
42 or license, or allowing any person to use [his] **such person's** certificate of registration or  
43 authority, permit, license or diploma from any school;

44        [(8)] (9) Disciplinary action against the holder of a license or other right to practice any  
45 profession regulated by this chapter granted by another state, territory, federal agency or country  
46 upon grounds for which revocation or suspension is authorized in this state;

47        [(9)] (10) A person is finally adjudged incapacitated or disabled by a court of competent  
48 jurisdiction;

49        [(10)] (11) Assisting or enabling any person to practice or offer to practice any  
50 profession licensed or regulated by this chapter who is not registered and currently eligible to  
51 practice under this chapter;

52        [(11)] (12) Issuance of a certificate of registration or authority, permit or license based  
53 upon a material mistake of fact;

54        [(12)] (13) Violation of the drug laws or rules and regulations of this state, any other  
55 state or the federal government;

56        [(13)] (14) Knowingly failing to report abuse or neglect of a resident in a long-term care  
57 facility, as required by section 198.070, RSMo, of which he **or she** has actual knowledge that it  
58 is abuse or neglect;

59        (15) **Violation of any professional trust or confidence;**

60        (16) **Having served as the operator, or any principal involved in the operation of**  
61 **a facility licensed under chapter 198, RSMo, during which time the facility has had its**  
62 **license revoked under section 198.036, RSMo, has entered into a consent agreement to**  
63 **obtain a probationary license under subsection 5 of section 198.026, RSMo, has had a**  
64 **license denied under subsection 2 of section 198.022, RSMo, or has surrendered its license**  
65 **while under investigation.**

66        3. The administrative hearing commission shall have no authority to require issuance of  
67 a license, pending a final determination by the commission, in any case in which an applicant is  
68 seeking initial licensure.

69        4. No license may be suspended or revoked and no application for renewal of a license  
70 may be denied under this section until the licensee has been afforded an opportunity for hearing  
71 after due notice as provided in sections 621.015 to 621.205, RSMo.

72        5. Upon a finding by the administrative hearing commission that the grounds, provided  
73 in subsection 2 of this section, for disciplinary action are met, the board may, singly or in  
74 combination, [place upon probation,] **censure or place the person named in the complaint on**  
75 **probation on such terms as the board deems appropriate, or may suspend or revoke [a] the**  
76 **certificate [of registration or authority], permit or license. The board may exclude any**  
77 **application for up to five years for any person who has had his or her license revoked by**  
78 **the board or has surrendered his or her license to the board.**

344.060. 1. The director of the department of health and senior services shall appoint ten suitable persons who together with the director of the division of aging of the department of health and senior services shall constitute the "Missouri Board of Nursing Home Administrators" which is hereby created within the department of health and senior services and which shall have the functions, powers and duties prescribed by sections 344.010 to [344.100] **344.108.**

2. In addition to the director of the [division of aging] **department of health and senior services** or [his] **the director's** designee the membership of the board shall consist of one licensed physician, two licensed health professionals, one person from the field of health care education, four persons who have been in general administrative charge of a licensed nursing home for a period of at least five years immediately preceding their appointment, and two public members. **In addition to these qualifications, the physician, the two licensed health care professionals, and the health care educator shall be citizens of the United States and tax-paying residents of the state of Missouri for one year preceding their appointments. The four appointees who have been in general administrative charge of a licensed nursing home shall be citizens of the United States and either residents of the state of Missouri for one year preceding their appointments or persons who have been licensed by the board and whose five years of employment in a licensed nursing home immediately preceding their appointment have occurred in the state of Missouri. The public members shall be citizens of the United States, residents of the state of Missouri for one year preceding their appointment, and registered voters.** The public members shall be persons who are not, or never were, licensed nursing home administrators or the spouse of such persons, or persons who do not have or never have had a material, financial interest in either the providing of licensed nursing home services or in an activity or organization directly related to licensed nursing home administration. Neither the one licensed physician, the two licensed health professionals, nor the person from the health care education field shall have any financial interest in a licensed nursing home.

3. The members of the board shall be appointed for three-year terms or until their successors are appointed and qualified provided that no more than four members' terms shall expire in the same year. All members appointed prior to September 28, 1979, shall serve the term for which they were appointed. The governor shall fill any vacancies on the board as necessary. Appointment to fill an unexpired term shall not be considered an appointment for a full term. Board membership, continued until successors are appointed and qualified, shall not constitute an extension of the three-year term and the successors shall serve only the remainder of the term.

35           4. Every member shall receive a certificate of appointment; and every appointee, before  
36 entering upon his or her duties, shall take the oath of office required by article VII, section 11,  
37 of the Constitution of Missouri.

38           5. Any member of the board may be removed by the director of the department of health  
39 and senior services for misconduct, incompetency or neglect to duty after first being given an  
40 opportunity to be heard in his **or her** own behalf.

          344.070. 1. The board shall annually elect one of its members as president, another as  
2 vice president, and another as secretary. It shall adopt an official seal. It shall file and preserve  
3 all written applications, petitions, complaints, charges or requests made or presented to it. It  
4 shall cause to be kept accurate records and minutes of its proceedings, and shall maintain a  
5 register of the names and addresses of all persons holding licenses as nursing home  
6 administrators. A copy of any entry in the register, or of any records or minutes of the board,  
7 certified by the president or secretary of the board under its seal, shall be received in evidence,  
8 to all intents and purposes as the original. The board may employ such part- or full-time clerical  
9 assistance, purchase such equipment and supplies, employ legal counsel, employ a part- or  
10 full-time investigator, and incur travel and other expense, within the limits of its appropriations.

11           2. The board shall adopt, amend and repeal rules and regulations necessary to carry out  
12 the provisions of sections 344.030 to [344.100] **344.108**. Any rule or regulation under the  
13 authority of sections 344.030 to [344.100] **344.108** shall be promulgated in accordance with  
14 chapter 536, RSMo. The committee on administrative rules may file a complaint in accordance  
15 with the provisions of chapter 536, RSMo, before the commission contesting the validity of any  
16 rule purportedly promulgated under the authority of sections 344.030 to [344.100] **344.108**. On  
17 filing any complaint in accordance with this section, the administrative hearing commission shall  
18 immediately suspend that portion of the rule which is challenged until the commission has  
19 determined the matter. The commission shall hold a hearing within ten days of the filing to  
20 determine the matter. No rule or portion of a rule promulgated under the authority of this chapter  
21 shall become effective unless it has been promulgated pursuant to the provisions of section  
22 536.024, RSMo.

23           3. The board shall examine, license, and renew the license of duly qualified applicants,  
24 and shall conduct hearings affording due process of law, upon charges calling for discipline of  
25 a licensee. The board shall refer to the appropriate prosecuting attorney information regarding  
26 any persons violating the provisions of sections 344.010 to [344.100] **344.108** and may incur  
27 necessary expenses therefor.

          344.080. The members of the board, other than the director of the [division of aging]  
2 **department of health and senior services** or his designee, shall receive as compensation for



3 their services fifty dollars for each day devoted to the affairs of the board, and shall be entitled  
4 to reimbursement for their expenses necessarily incurred in the discharge of their official duties.

344.105. 1. Any nursing home administrator possessing a current license to practice as  
2 a nursing home administrator in this state who has maintained an active license for at least ten  
3 years may retire his or her license by filing an affidavit with the board which states the date on  
4 which the licensee retired from such practice and such other facts as tend to verify the retirement  
5 as the board may deem necessary. The affidavit shall be accompanied by a fee [of twenty-five  
6 dollars] **as provided by rule**, made payable to the [division of aging] **department of health and**  
7 **senior services**. Such request for retired status may also be accomplished by signing the request  
8 for retired status that appears on the nursing home administrator's application for license renewal  
9 and returning such application to the board prior to June thirtieth of the year of renewal of the  
10 administrator's active license, accompanied by a fee [of twenty-five dollars] **as provided by rule**,  
11 made payable to the [division of aging] **department of health and senior services**. Information  
12 provided in the request for retired status shall be given under oath subject to the penalties for the  
13 making of a false affidavit.

14 2. An individual who requests retired license status shall return his or her original wall  
15 license and all other indicia of licensure to the board. Once the board has received the original  
16 wall license from the licensee and the other requirements for requesting retired status have been  
17 met, the board shall issue a new license to the licensee indicating that the licensee is retired.

18 3. A retired license may be reactivated within five years of the granting of the retired  
19 license by filing with the board evidence satisfactory to the board of the completion of twenty  
20 clock hours of continuing education for each calendar year the license was retired **accompanied**  
21 **by a fee as provided by rule made payable to the department of health and senior services**.  
22 All clock hours of continuing education shall be completed prior to the filing of the affidavit or  
23 renewal form requesting reactivation of the retired license. If more than five years have passed  
24 since the issuance of a retired license to a licensee, the licensee shall follow the procedures for  
25 initial licensure stated in section 344.030.

26 4. No person shall practice as a nursing home administrator in this state or hold himself  
27 or herself out as a nursing home administrator if his or her license is retired.

28 5. Retired licensees shall remain subject to disciplinary action for violations of this  
29 chapter and the rules promulgated thereunder.

**344.108. 1. Any nursing home administrator possessing a current license to**  
2 **practice as a nursing home administrator in this state may place such license on inactive**  
3 **status by filing a written signed request for inactive status with the board, accompanied**  
4 **by evidence satisfactory to the board of completion of ten clock hours of continuing**  
5 **education in the area of patient care and a fee as provided by rule made payable to the**

6 department of health and senior services. This request may also be accomplished by  
7 signing the request for inactive status that appears on the nursing home administrator's  
8 application for license renewal and returning such application to the board prior to June  
9 thirtieth of the year of renewal of the administrator's active license, accompanied by  
10 evidence satisfactory to the board of completion of ten clock hours of continuing education  
11 in the area of patient care and a fee as provided by rule made payable to the department  
12 of health and senior services. Information provided in the request for inactive status shall  
13 be given under oath subject to the penalties of making a false affidavit.

14       2. An individual who requests that his or her license be placed on inactive status  
15 shall return all indicia of licensure to the board.

16       3. An inactive license shall expire on June thirtieth of the year following the year  
17 of issuance and every other year thereafter. Licensees seeking to renew shall, during the  
18 month of May of the year of renewal, file an application for renewal on forms furnished  
19 by the board that include evidence satisfactory to the board of completion of ten clock  
20 hours of continuing education in the area of patient care and shall be accompanied by a  
21 renewal fee as provided by rule payable to the department of health and senior services.

22       4. A license may be carried in inactive status for up to six years from the date of  
23 issuance. If the licensee does not reactivate the license during the six-year period, the  
24 license shall expire on the last day of the six-year period.

25       5. A holder of an inactive license may reactivate the license by submitting a written  
26 request to the board, accompanied by evidence satisfactory to the board of the completion  
27 of forty clock hours of continuing education and a fee as provided by rule made payable  
28 to the department of health and senior services. The forty clock hours of continuing  
29 education shall be earned no earlier than six months prior to the request for reactivation  
30 and no later than six months after the inactive license has been reactivated. If the holder  
31 of an inactive license requests reactivation prior to completing the forty clock hours of  
32 continuing education, the board shall issue a six-month interim license to the licensee. The  
33 interim license shall expire six months from the date of issuance or at such earlier time as  
34 the licensee earns the forty clock hours of continuing education and submits evidence  
35 satisfactory to the board of completion of the required hours.

36       6. A request for reactivation of an inactive license shall show, under oath or  
37 affirmation of the nursing home administrator, a statement that the nursing home  
38 administrator has not practiced during the inactive period and is not presently practicing  
39 in this state.

40       7. No person shall practice as a nursing home administrator or hold himself or  
41 herself out as a nursing home administrator in this state while his or her license is inactive.

42           **8. Inactive licenses shall remain subject to discipline for violations of this chapter**  
43   **and the rules promulgated thereunder.**

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