

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND Senate Substitute for Senate Bill No. 416, Page 1, In the Title, Line 3, by deleting all of  
2 said line and inserting in lieu thereof the following "sections relating to professional registration";  
3 and  
4

5 Further amend said bill, page 4, section 214.208, line 38, by inserting immediately after said line the  
6 following:  
7

8 "324.001. 1. (1) The purpose of sections 324.001 to 324.1109 is to promote the general  
9 welfare by establishing guidelines for the regulation of occupations and professions not regulated  
10 prior to January 1, 2016.

11 (2) All individuals may engage in the occupation of their choice, free from unreasonable  
12 government regulation. The state may not impose a substantial burden on an individual's pursuit of  
13 his or her occupation or profession unless there is an important governmental interest for the state to  
14 protect the general welfare. If such an interest exists, the regulation adopted by the state shall be the  
15 least restrictive type of regulation consistent to the public interest to be protected.

16 (3) All bills introduced in the legislature to regulate an occupation or profession for the first  
17 time shall be reviewed according to the following criteria. An occupation or profession shall be  
18 regulated by the state only if:

19 (a) Unregulated practice has caused significant harm and endangered the general welfare and  
20 the potential for further harm and endangerment is easily recognizable and not remote or dependent  
21 upon tenuous argument;

22 (b) The public needs and can reasonably be expected to benefit from an assurance of initial  
23 personal qualifications; and

24 (c) The general welfare cannot be effectively protected by other means.

25 (4) After evaluating the criteria in subdivision (3) of this subsection and considering  
26 governmental, economic, and societal costs and benefits, if the legislature finds that the state has an  
27 important interest in regulating an occupation or profession not previously regulated by law, the least  
28 restrictive type of regulation shall be implemented, consistent with the need to protect the general  
29 welfare and this section. If:

30 (a) Market competition, common law, statutory civil actions, and criminal prohibitions are  
31 insufficient to eradicate actual harm, the regulation shall provide for stricter civil actions and

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 criminal prosecutions;

2 (b) A service is being performed for individuals involves a hazard to the general welfare, the  
3 regulation shall impose inspection requirements and enable an appropriate state agency to enforce  
4 violations by injunctive relief in court including, but not limited to, regulation of the business  
5 activity providing the service rather than practitioners;

6 (c) The threat to the general welfare resulting from the practitioner's services is relatively  
7 small, easily identifiable or predictable, the regulation shall implement a system of insurance,  
8 bonding, or registration;

9 (d) The consumer possesses significantly less information so that the practitioner puts the  
10 consumer in a disadvantageous position relative to the practitioner to judge the quality of the  
11 practitioner's services, the regulation shall implement a voluntary system of certification; or

12 (e) There is no other type of regulation that will protect the general welfare other than  
13 licensing, the regulation shall implement a system of licensing.

14 2. For the purposes of this section, the following terms mean:

15 (1) "Applicant group", any occupational or professional group or organization, any  
16 individual, or any other interested party that proposes that any occupation or profession not presently  
17 regulated be regulated;

18 (2) "Certification", a voluntary program in which the government grants nontransferable  
19 recognition to an individual who meets personal qualifications established by a legislative body.  
20 Upon approval, the individual may use "certified" as a designated title. Someone who has not been  
21 recognized as certified may perform the occupation for compensation lawfully, but shall not use the  
22 title "certified". This term shall not be synonymous with an occupational license or prohibit the use  
23 of private certification;

24 (3) "Department", the department of insurance, financial institutions and professional  
25 registration;

26 [(2)] (4) "Director", the director of the division of professional registration; and

27 [(3)] (5) "Division", the division of professional registration;

28 (6) "General welfare", the concern of the government for the health, peace, morality, and  
29 safety of its citizens;

30 (7) "Grandfather clause", a provision in a regulatory statute applicable to practitioners  
31 actively engaged in the regulated occupation or profession prior to the effective date of the  
32 regulatory statute which exempts the practitioners from meeting the personal qualifications set forth  
33 in the regulatory statute to perform prescribed occupational tasks;

34 (8) "Inspection" the periodic examination of practitioners by a state agency in order to  
35 ascertain whether the practitioners' activities are being carried out in a fashion consistent with the  
36 requisite level of cleanliness necessary to protect the general welfare;

37 (9) "Lawful occupation", a course of conduct, pursuit, or profession that includes the sale of  
38 goods or services that are not themselves illegal to sell irrespective of whether the individual selling  
39 them is subject to an occupational regulation;

40 (10) "Least restrictive type of occupational regulations", in order from least to most  
41 restrictive;

- 1        (a) Market competition;
- 2        (b) A provision for private civil action to remedy consumer harm;
- 3        (c) Criminal sanction;
- 4        (d) Regulation of the business activity providing the service rather than the practitioner;
- 5        (e) Inspection;
- 6        (f) Bonding or insurance;
- 7        (g) Registration;
- 8        (h) Certification;
- 9        (i) Occupational license;
- 10       (11) "Legislative committees of reference", the standing legislative committees designated
- 11 by the respective rules committees of the senate and house of representatives to consider proposed
- 12 legislation to regulate occupations, or professions not previously regulated;
- 13       (12) "Occupational license", a nontransferable authorization in law for an individual to
- 14 perform a lawful occupation for compensation based on meeting personal qualifications established
- 15 by a legislative body. It shall be prohibited for an individual who does not possess an occupational
- 16 license to perform the occupation for compensation;
- 17       (13) "Occupational regulation", a statute, ordinance, rule, practice, policy, or other law
- 18 requiring an individual to possess certain personal qualifications to work in a lawful occupation;
- 19       (14) "Personal qualifications", criteria related to an individual's personal background
- 20 including completion of an approved educational program, satisfactory performance on an
- 21 examination, work experience, criminal history, moral standing, and completion of continuing
- 22 education;
- 23       (15) "Practitioner", an individual who has achieved knowledge and skill by practice and is
- 24 actively engaged in a specified occupation or profession;
- 25       (16) "Public member" an individual who is not currently, and has never been in the past, a
- 26 member or spouse of a member of the occupation or profession being regulated or an individual who
- 27 does not currently have and has never in the past had a material financial interest in either the
- 28 rendering of the occupation or professional service being regulated or an activity directly related to
- 29 the occupation or profession being regulated;
- 30       (17) "Registration", a requirement established by the legislature in which a person:
- 31       (a) Submits notification to a state agency; and
- 32       (b) May use "registered" as a designated title.
- 33
- 34 Notification may include the person's name and address, the person's agent for service of process, the
- 35 location of the activity to be performed, and a description of the service the person provides.
- 36 Registration may include a requirement to post a bond but does not include education or experience
- 37 requirements. Nonregistered persons may not perform the occupation for compensation or use
- 38 "registered" as a designated title. The term registration shall not be synonymous with an
- 39 occupational license and does not refer to or prohibit the use of private registration;
- 40       (18) "Regulatory entity", any board, commission, agency, division, or other unit or subunit
- 41 of state government which regulates one or more professions, occupations, industries, businesses, or

1 other endeavors in this state;

2 (19) "State agency", every state office, department, board, commission, regulatory entity,  
3 and agency of the state, and, if provided by law, programs and activities involving less than the full  
4 responsibility of a state agency;

5 (20) "Substantial burden", a requirement in an occupational regulation that imposes  
6 significant difficulty or cost on an individual seeking to enter into or continue in a lawful occupation  
7 and is more than an incidental burden.

8 [2.] 3. After January 1, 2016, applicant groups shall explain each of the following factors to  
9 the extent requested by the legislative committees of reference:

10 (1) A definition of the problem and why regulation is necessary including, but not limited to:

11 (a) The description and quantification of the actual harm to the general public due to the fact  
12 that the occupation or profession is not regulated;

13 (b) The extent to which the actual harm could be avoided;

14 (c) A description of how consumers will benefit in the future from the proposed type of  
15 regulation; and

16 (d) The extent of autonomy a practitioner has, as indicated by:

17 a. The extent to which the occupation or profession calls for independent judgment and the  
18 extent of skill or experience required in making the independent judgment; and

19 b. The extent to which practitioners are supervised;

20 (2) The efforts made to address the actual harm caused:

21 (a) Voluntary efforts, if any, by members of the occupation or profession to:

22 a. Establish a code of ethics; or

23 b. Help resolve disputes between practitioners and consumers; and

24 (b) Recourse to and the extent of use of applicable law and whether it could be strengthened  
25 to control the problem;

26 (3) The alternatives considered including, but not limited to:

27 (a) Increased civil or criminal sanctions;

28 (b) Regulation of businesses rather than practitioners;

29 (c) Regulation of the service or training program rather than the individual practitioners;

30 (d) Inspections;

31 (e) Bonding or insurance;

32 (f) Registration of all practitioners;

33 (g) Certification of all practitioners;

34 (h) Other alternatives;

35 (i) Why the use of the alternatives specified in this subsection would not be adequate to  
36 protect the general welfare; and

37 (j) Why licensing would serve to protect the general welfare;

38 (4) The benefit to the public if regulation is granted;

39 (5) The extent to which the incidences of specific problems present in the unregulated  
40 occupation or profession can reasonably be expected to be reduced by proposed regulation;

41 (6) Whether the public can identify qualified practitioners;

1       (7) The extent to which the public can be confident that qualified practitioners are  
2 competent:

3       (a) Whether the proposed regulatory entity would be a board composed of members of the  
4 profession and public members, a state agency, or both, and, if appropriate, their respective  
5 responsibilities in administering the system of inspections, bonding, insurance, registration,  
6 certification, or licensure, including the composition of the board and the number of public  
7 members, if any; the powers and duties of the board or state agency regarding examinations and for  
8 cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the  
9 promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and  
10 disciplinary action taken against practitioners; and how fees would be levied and collected to cover  
11 the expenses of administering and operating the regulatory system;

12       (b) If there is a grandfather clause, how consumers will be protected from the harm caused  
13 by current practitioners that is the basis for advocating for the enactment of the proposed regulation;

14       (c) If there is a grandfather clause, if current practitioners will be required to meet the  
15 prerequisite qualifications established by the regulatory entity at a later date and if not, why not;

16       (d) Whether the regulatory entity would be authorized to enter into reciprocity agreements  
17 with other jurisdictions;

18       (e) The nature and duration of any training including, but not limited to, whether the training  
19 includes a substantial amount of supervised field experience; whether training programs exist in this  
20 state; if there will be an experience requirement; whether the experience shall be acquired under a  
21 registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods  
22 of meeting the prerequisite qualifications; whether all applicants will be required to pass an  
23 examination; and, if an examination is required, by whom it will be developed and how the costs of  
24 development will be met; and

25       (f) What additional training programs are anticipated to be necessary to assure training is  
26 accessible statewide; the anticipated time required to establish the additional training programs; the  
27 types of institutions capable of providing the training; a description of how training programs will  
28 meet the needs of the expected workforce, including reentry workers, minorities, placebound  
29 students, and others;

30       (8) Assurance of the public that practitioners have maintained their competence:

31       (a) Whether the registration, certification, or licensure will carry an expiration date; and

32       (b) Whether renewal will be based only upon payment of a fee, or whether renewal will  
33 involve reexamination, peer review, or other enforcement;

34       (9) The extent to which regulation might harm the public;

35       (10) The extent to which regulation will restrict entry into the occupation or profession:

36       (a) Whether the proposed personal qualifications are more restrictive than necessary to  
37 insure safe and effective performance;

38       (b) How the proposed personal qualifications compare to other regulations in the state which  
39 may involve greater risks to the general welfare; and

40       (c) The number of other states that regulate the same occupation or profession and how the  
41 proposed personal qualifications compare to required personal qualifications in other states that

1 regulate the same occupation or profession;

2 (11) Whether there are similar professions to that of the applicant group which shall be  
3 included in or portions of the applicant group which shall be excluded from the proposed legislation;

4 (12) The maintenance of personal qualifications;

5 (13) Whether effective quality assurance standards exist in the occupation or profession,  
6 such as legal requirements associated with specific programs that define or enforce professional  
7 standards, or a code of ethics;

8 (14) How the proposed legislation will assure:

9 (a) The extent to which a code of ethics, if any, will be adopted; and

10 (b) Grounds for suspension or revocation of registration, certification, or licensure;

11 (15) A description of the group proposed for regulation, including a list of associations,  
12 organizations, and other groups representing the practitioners in this state, an estimate of the number  
13 of practitioners in each group, and whether the groups represent different levels of practice; and

14 (16) The expected costs of regulation including, but not limited to:

15 (a) The impact registration, certification, or licensure will have on the costs of the services to  
16 the public;

17 (b) The cost to the state and to the general public of implementing the proposed legislation;  
18 and

19 (c) The cost to the state and the members of the group proposed for regulation for the  
20 required education, including projected tuition and expenses and expected increases in training  
21 programs, staffing, and enrollments at state training institutions.

22 4. Applicant groups shall submit a written report explaining the factors enumerated in  
23 subsection 3 of this section to the legislative committees of reference.

24 5. A legislative proposal which contains a continuing education requirement shall be  
25 accompanied by a detailed explanation of how such requirement could be effective for the profession  
26 addressed in the legislation.

27 6. Nothing in this section shall be construed to create a right of action against a private party  
28 or to require a private party to do business with an individual who is not licensed, certified or  
29 registered with the government or to create a right of action against the state, county, municipal, or  
30 other level of government in the state.

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

37 [3.] 8. The director of the division of professional registration shall promulgate rules and  
38 regulations which designate for each board or commission assigned to the division the renewal date  
39 for licenses or certificates. After the initial establishment of renewal dates, no director of the  
40 division shall promulgate a rule or regulation which would change the renewal date for licenses or  
41 certificates if such change in renewal date would occur prior to the date on which the renewal date in

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

14 [4.] 9. The division shall provide clerical and other staff services relating to the issuance and  
15 renewal of licenses for all the professional licensing and regulating boards and commissions assigned  
16 to the division. The division shall perform the financial management and clerical functions as they  
17 each relate to issuance and renewal of licenses and certificates. "Issuance and renewal of licenses  
18 and certificates" means the ministerial function of preparing and delivering licenses or certificates,  
19 and obtaining material and information for the board or commission in connection with the renewal  
20 thereof. It does not include any discretionary authority with regard to the original review of an  
21 applicant's qualifications for licensure or certification, or the subsequent review of licensee's or  
22 certificate holder's qualifications, or any disciplinary action contemplated against the licensee or  
23 certificate holder. The division may develop and implement microfilming systems and automated or  
24 manual management information systems.

25 [5.] 10. The director of the division shall maintain a system of accounting and budgeting, in  
26 cooperation with the director of the department, the office of administration, and the state auditor's  
27 office, to ensure proper charges are made to the various boards for services rendered to them. The  
28 general assembly shall appropriate to the division and other state agencies from each board's funds  
29 moneys sufficient to reimburse the division and other state agencies for all services rendered and all  
30 facilities and supplies furnished to that board.

31 [6.] 11. For accounting purposes, the appropriation to the division and to the office of  
32 administration for the payment of rent for quarters provided for the division shall be made from the  
33 "Professional Registration Fees Fund", which is hereby created, and is to be used solely for the  
34 purpose defined in subsection [5] 10 of this section. The fund shall consist of moneys deposited into  
35 it from each board's fund. Each board shall contribute a prorated amount necessary to fund the  
36 division for services rendered and rent based upon the system of accounting and budgeting  
37 established by the director of the division as provided in subsection [5] 10 of this section. Transfers  
38 of funds to the professional registration fees fund shall be made by each board on July first of each  
39 year; provided, however, that the director of the division may establish an alternative date or dates of  
40 transfers at the request of any board. Such transfers shall be made until they equal the prorated  
41 amount for services rendered and rent by the division. The provisions of section 33.080 to the

1 contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of  
2 general revenue.

3 [7.] 12. The director of the division shall be responsible for collecting and accounting for all  
4 moneys received by the division or its component agencies. Any money received by a board or  
5 commission shall be promptly given, identified by type and source, to the director. The director shall  
6 keep a record by board and state accounting system classification of the amount of revenue the  
7 director receives. The director shall promptly transmit all receipts to the department of revenue for  
8 deposit in the state treasury to the credit of the appropriate fund. The director shall provide each  
9 board with all relevant financial information in a timely fashion. Each board shall cooperate with the  
10 director by providing necessary information.

11 [8.] 13. All educational transcripts, test scores, complaints, investigatory reports, and  
12 information pertaining to any person who is an applicant or licensee of any agency assigned to the  
13 division of professional registration by statute or by the department are confidential and may not be  
14 disclosed to the public or any member of the public, except with the written consent of the person  
15 whose records are involved. The agency which possesses the records or information shall disclose  
16 the records or information if the person whose records or information is involved has consented to  
17 the disclosure. Each agency is entitled to the attorney-client privilege and work-product privilege to  
18 the same extent as any other person. Provided, however, that any board may disclose confidential  
19 information without the consent of the person involved in the course of voluntary interstate exchange  
20 of information, or in the course of any litigation concerning that person, or pursuant to a lawful  
21 request, or to other administrative or law enforcement agencies acting within the scope of their  
22 statutory authority. Information regarding identity, including names and addresses, registration, and  
23 currency of the license of the persons possessing licenses to engage in a professional occupation and  
24 the names and addresses of applicants for such licenses is not confidential information.

25 [9.] 14. Any deliberations conducted and votes taken in rendering a final decision after a  
26 hearing before an agency assigned to the division shall be closed to the parties and the public. Once  
27 a final decision is rendered, that decision shall be made available to the parties and the public.

28 [10.] 15. A compelling governmental interest shall be deemed to exist for the purposes of  
29 section 536.025 for licensure fees to be reduced by emergency rule, if the projected fund balance of  
30 any agency assigned to the division of professional registration is reasonably expected to exceed an  
31 amount that would require transfer from that fund to general revenue.

32 [11.] 16. (1) The following boards and commissions are assigned by specific type transfers  
33 to the division of professional registration: Missouri state board of accountancy, chapter 326; board  
34 of cosmetology and barber examiners, chapters 328 and 329; Missouri board for architects,  
35 professional engineers, professional land surveyors and landscape architects, chapter 327; Missouri  
36 state board of chiropractic examiners, chapter 331; state board of registration for the healing arts,  
37 chapter 334; Missouri dental board, chapter 332; state board of embalmers and funeral directors,  
38 chapter 333; state board of optometry, chapter 336; Missouri state board of nursing, chapter 335;  
39 board of pharmacy, chapter 338; state board of podiatric medicine, chapter 330; Missouri real estate  
40 appraisers commission, chapter 339; and Missouri veterinary medical board, chapter 340. The  
41 governor shall appoint members of these boards by and with the advice and consent of the senate.



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

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

(4) "Board personnel", as used in this section or chapters 317, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345, shall mean personnel whose functions and responsibilities are in areas not related to the clerical duties involving the issuance and renewal of licenses, to the collecting and accounting for moneys, or to financial management relating to issuance and renewal of licenses; specifically included are executive secretaries (or comparable positions), consultants, inspectors, investigators, counsel, and secretarial support staff for these positions; and such other positions as are established and authorized by statute for a particular board or commission. Boards and commissions may employ legal counsel, if authorized by law, and temporary personnel if the board is unable to meet its responsibilities with the employees authorized above. Any board or commission which hires temporary employees shall annually provide the division director and the appropriation committees of the general assembly with a complete list of all persons employed in the previous year, the length of their employment, the amount of their remuneration, and a description of their responsibilities.

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

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

[13.] 18. Wherever the laws, rules, or regulations of this state make reference to the "division of professional registration of the department of economic development", such references shall be deemed to refer to the division of professional registration.

621.280 1. For any new board or commission created after July 1, 2015, and

1 charged with regulating or licensing an occupation or profession, those practitioners actively  
2 engaged in the newly regulated occupation or profession for at least one year prior to the effective  
3 date of the regulatory statute shall have a property right in their continued legal ability to engage in  
4 their occupation or profession.

5 2. Any decision of a newly-created board or commission to refuse licensure to a pre-existing  
6 practitioner shall be in writing, shall inform the pre-existing practitioner of the specific reasons for  
7 the denial, and shall inform the pre-existing practitioner of their right to appeal before a neutral  
8 decision-maker at the administrative hearing commission. Any pre-existing practitioner denied  
9 licensure shall have the right to file an appeal to the administrative hearing commission on their  
10 license denial within thirty days after the decision of the newly-created board or commission. If the  
11 pre-existing practitioner does not timely appeal, their right to continue practicing the occupation or  
12 profession shall extinguish immediately. In the event of a timely appeal, the pre-existing  
13 practitioner's right to practice their occupation or profession shall continue until a final decision of  
14 the administrative hearing commission. The burden of proof in any hearing under this section shall  
15 be on the new board or commission to show that the pre-existing practitioner does not meet the  
16 requirements of the new regulatory regime."; and

17  
18 Further amend said bill by amending the title, enacting clause, and intersectional references  
19 accordingly.  
20