

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1168
93RD GENERAL ASSEMBLY

Reported from the Committee on Professional Registration and Licensing February 16, 2006 with recommendation that House Committee Substitute for House Bill No. 1168 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

3668L.03C

AN ACT

To amend chapter 338, RSMo, by adding thereto one new section relating to impaired pharmacists.

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

Section A. Chapter 338, RSMo, is amended by adding thereto one new section, to be known as section 338.380, to read as follows:

338.380. 1. As used in this section the term "committee" means the well-being committee established under subsection 3 of this section.

2. The board may refuse to issue any certificate of registration or authority, permit or license, required under this chapter for one or any combination of causes stated in subsection 2 of section 338.055, or the board may, as a condition to issuing or renewing any such certificate of registration or authority, permit or license, require a person to submit himself or herself for identification, intervention, treatment, or rehabilitation by the well-being committee as provided in this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

3. The board may establish an impaired licensee committee, to be designated as the "Well-being Committee", to promote the early identification, intervention, treatment and rehabilitation of licensees identified within this chapter, who may be impaired by reasons of illness, substance abuse, or as a result of any physical or mental condition. The board

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.

15 may enter into a contractual agreement with a nonprofit corporation or an association for
16 the purpose of creating, supporting and maintaining such a committee. The board may
17 promulgate rules subject to the provisions of this section to effectuate and implement any
18 committee formed under this section. The board may expend appropriated funds
19 necessary to provide for operational expenses of the committee formed under this section.
20 Any member of the committee, as well as any administrator, staff member, consultant,
21 agent or employee of the committee, acting within the scope of his or her duties and
22 without actual malice and, all other persons who furnish information to the committee in
23 good faith and without actual malice, shall not be liable for any claim of damages as a
24 result of any statement, decision, opinion, investigation or action taken by the committee
25 or by any individual member of the committee.

26 4. All information, interviews, reports, statements, memoranda or other documents
27 furnished to or produced by the committee, as well as communications to or from the
28 committee, any findings, conclusions, interventions, treatment, rehabilitation, or other
29 proceedings of the committee which in any way pertain to a licensee who may be, or who
30 actually is, impaired shall be absolutely privileged and confidential.

31 5. All records and proceedings of the committee which pertain or refer to a licensee
32 who may be, or who actually is, impaired shall be privileged and confidential and shall be
33 used by the committee and its members only in the exercise of the proper function of the
34 committee and shall not be considered public records under chapter 610, RSMo, and shall
35 only be subject to discovery or introduction as evidence in any civil, criminal, or
36 administrative proceedings except as provided in subsection 6 of this section.

37 6. The committee may disclose information relative to an impaired licensee only
38 when:

39 (1) It is essential to disclose the information to further the intervention, treatment,
40 or rehabilitation needs of the impaired licensee and only to those persons or organization
41 with a need to know;

42 (2) Its release is authorized in writing by the impaired licensee;

43 (3) The committee is required to make a report to the board;

44 (4) The information is subject to a court order.

45 7. In lieu of the pursuing discipline against a licensee for violating one or more
46 causes stated in subsection 2 of section 338.055, the board may enter into a diversion
47 agreement with a licensee to refer the licensee to the committee under such terms and
48 conditions as are agreed to by the board and licensee. The board shall enter into no more
49 than two diversion agreements with any individual licensee. If the licensee violates a term
50 or condition of a diversion agreement entered into under this section, the board may elect

51 to pursue discipline against the licensee under chapter 621, RSMo, for the original conduct
52 that resulted in the diversion agreement, or for any subsequent violation of subsection 2
53 of section 338.055. While the licensee participates in the committee, the time limitations
54 of section 620.154, RSMo, shall toll under subsection 7 of section 620.154, RSMo. All
55 records pertaining to diversion agreements are confidential and may only be released
56 under subdivision (7) of subsection 14 of section 620.010, RSMo.

57 8. The committee shall report to the board the name of any licensee who fails to
58 enter treatment within forty-eight hours following the provider's determination that the
59 pharmacist needs treatment or any failure by a licensee to comply with the terms of a
60 treatment contract during inpatient or outpatient treatment or aftercare or report a
61 licensee who resumes the practice of pharmacy before the treatment provider has made a
62 clear determination that the pharmacist is capable of practicing according to acceptable
63 and prevailing standards.

64 9. The board may disclose information and records to the committee to assist the
65 committee in the identification, intervention, treatment, and rehabilitation of any licensee
66 who may be impaired by reason of illness, substance abuse, or as the result of any physical
67 or mental condition. The committee shall keep all information and records provided by
68 the board confidential to the extent the board is required to treat the information and
69 records as closed to the public under chapter 620, RSMo.

70 10. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
71 that is created under the authority delegated in this section shall become effective only if
72 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
73 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
74 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
75 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
76 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
77 adopted after August 28, 2006, shall be invalid and void.

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