

SECOND REGULAR SESSION

HOUSE BILL NO. 1168

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES TILLEY (Sponsor), MOORE, SATER,
PAGE AND YAEGER (Co-sponsors).

Pre-filed December 20, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3668L.01I

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
2 known as section 338.380, to read as follows:

**338.380. 1. As used in this section the term "committee" means the well-being
2 committee established under subsection 2 of this section.**

**3 2. The board may establish an impaired licensee committee, to be designated as the
4 "Well-being Committee", to promote the early identification, intervention, treatment and
5 rehabilitation of licensees identified within this chapter, who may be impaired by reasons
6 of illness, substance abuse, or as a result of any physical or mental condition. The board
7 may enter into a contractual agreement with a nonprofit corporation or an association for
8 the purpose of creating, supporting and maintaining such a committee. The board may
9 promulgate rules subject to the provisions of this section to effectuate and implement any
10 committee formed under this section. The board may expend appropriated funds
11 necessary to provide for operational expenses of the committee formed under this section.
12 Any member of the committee, as well as any administrator, staff member, consultant,
13 agent or employee of the committee, acting within the scope of his or her duties and
14 without actual malice and, all other persons who furnish information to the committee in**

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 good faith and without actual malice, shall not be liable for any claim of damages as a
16 result of any statement, decision, opinion, investigation or action taken by the committee
17 or by any individual member of the committee.

18 **3. All information, interviews, reports, statements, memoranda or other documents**
19 **furnished to or produced by the committee, as well as communications to or from the**
20 **committee, any findings, conclusions, interventions, treatment, rehabilitation, or other**
21 **proceedings of the committee which in any way pertain to a licensee who may be, or who**
22 **actually is, impaired shall be absolutely privileged and confidential.**

23 **4. All records and proceedings of the committee which pertain or refer to a licensee**
24 **who may be, or who actually is, impaired shall be privileged and confidential and shall be**
25 **used by the committee and its members only in the exercise of the proper function of the**
26 **committee and shall not be considered public records under chapter 610, RSMo, and shall**
27 **not be subject to court subpoena or subject to discovery or introduction as evidence in any**
28 **civil, criminal, or administrative proceedings except as provided in subsection 5 of this**
29 **section.**

30 **5. The committee may disclose information relative to an impaired licensee only**
31 **when:**

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

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

36 **(3) The committee is required to make a report to the board.**

37 **6. In lieu of the pursuing discipline against a licensee for violating one or more**
38 **causes stated in subsection 2 of section 338.055, the board may enter into a diversion**
39 **agreement with a licensee to refer the licensee to the committee under such terms and**
40 **conditions as are agreed to by the board and licensee. The board shall enter into no more**
41 **than two diversion agreements with any individual licensee. If the licensee violates a term**
42 **or condition of a diversion agreement entered into under this section, the board may elect**
43 **to pursue discipline against the licensee under chapter 621, RSMo, for the original conduct**
44 **that resulted in the diversion agreement, or for any subsequent violation of subsection 2**
45 **of section 338.055. While the licensee participates in the committee, the time limitations**
46 **of section 620.154, RSMo, shall toll under subsection 7 of section 620.154, RSMo. All**
47 **records pertaining to diversion agreements are confidential and may only be released**
48 **under subdivision (7) of subsection 14 of section 620.010, RSMo.**

49 **7. The committee shall report to the board the name of any licensee who fails to**
50 **enter treatment within forty-eight hours following the provider's determination that the**

51 pharmacist needs treatment or any failure by a licensee to comply with the terms of a
52 treatment contract during inpatient or outpatient treatment or aftercare or report a
53 licensee who resumes the practice of pharmacy before the treatment provider has made a
54 clear determination that the pharmacist is capable of practicing according to acceptable
55 and prevailing standards.

56 8. The board may disclose information and records to the committee to assist the
57 committee in the identification, intervention, treatment, and rehabilitation of any licensee
58 who may be impaired by reason of illness, substance abuse, or as the result of any physical
59 or mental condition. The committee shall keep all information and records provided by
60 the board confidential to the extent the board is required to treat the information and
61 records as closed to the public under chapter 620, RSMo.

62 9. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
63 that is created under the authority delegated in this section shall become effective only if
64 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
65 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
66 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
67 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
68 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
69 adopted after August 28, 2006, shall be invalid and void.

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