

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1168

AN ACT

To repeal sections 338.010 and 338.095, RSMo, and to enact in lieu thereof three new sections relating to pharmacists.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1           Section A. Sections 338.010 and 338.095, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as  
3 sections 338.010, 338.095, and 338.380, to read as follows:

4           338.010. 1. The "practice of pharmacy" [shall mean] means  
5 the interpretation, implementation, and evaluation of medical or  
6 veterinary prescription orders, including receipt, transmission,  
7 or handling of such orders or facilitating the dispensing of such  
8 orders; the designing, initiating, implementing, and monitoring  
9 of a medication therapeutic plan as defined by the prescription  
10 order so long as the prescription order is specific to each  
11 patient for care by a specific pharmacist; the compounding,  
12 dispensing [and], labeling, and administration of drugs and  
13 devices pursuant to medical or veterinary prescription orders and  
14 administration of viral influenza vaccines by written protocol

1 authorized by a physician for persons over the age of twelve as  
2 authorized by rule; the participation in drug selection according  
3 to state law and participation in drug utilization reviews; the  
4 proper and safe storage of drugs and devices and the maintenance  
5 of proper records thereof; consultation with patients and other  
6 health care practitioners about the safe and effective use of  
7 drugs and devices; and the offering or performing of those acts,  
8 services, operations, or transactions necessary in the conduct,  
9 operation, management and control of a pharmacy. No person shall  
10 engage in the practice of pharmacy unless he is licensed under  
11 the provisions of this chapter. This chapter shall not be  
12 construed to prohibit the use of auxiliary personnel under the  
13 direct supervision of a pharmacist from assisting the pharmacist  
14 in any of his duties. This assistance in no way is intended to  
15 relieve the pharmacist from his responsibilities for compliance  
16 with this chapter and he will be responsible for the actions of  
17 the auxiliary personnel acting in his assistance. This chapter  
18 shall also not be construed to prohibit or interfere with any  
19 legally registered practitioner of medicine, dentistry, podiatry,  
20 or veterinary medicine, or the practice of optometry in  
21 accordance with and as provided in sections 195.070 and 336.220,  
22 RSMo, in the compounding or dispensing of his own prescriptions.

23 2. Any pharmacist who accepts a prescription order for a  
24 medication therapeutic plan shall have a written protocol from  
25 the physician who refers the patient for medication therapy  
26 services. The written protocol and the prescription order for a  
27 medication therapeutic plan shall come from the physician only,  
28 and shall not come from a nurse engaged in a collaborative

1 practice arrangement under section 334.104, RSMo, or from a  
2 physician assistant engaged in a supervision agreement under  
3 section 334.735, RSMo.

4 3. Nothing in this section shall be construed as to prevent  
5 any person, firm or corporation from owning a pharmacy regulated  
6 by sections 338.210 to 338.315, provided that a licensed  
7 pharmacist is in charge of such pharmacy.

8 [3.] 4. Nothing in this section shall be construed to apply  
9 to or interfere with the sale of nonprescription drugs and the  
10 ordinary household remedies and such drugs or medicines as are  
11 normally sold by those engaged in the sale of general  
12 merchandise.

13 5. No health carrier as defined in chapter 376, RSMo, shall  
14 require any physician with which they contract to enter into a  
15 written protocol with a pharmacist for medication therapeutic  
16 services.

17 6. This section shall not be construed to allow a  
18 pharmacist to diagnose or independently prescribe  
19 pharmaceuticals.

20 7. The state board of registration for the healing arts,  
21 under section 334.125, RSMo, and the state board of pharmacy,  
22 under section 338.140, shall jointly promulgate rules regulating  
23 the use of protocols for prescriptions orders for medication  
24 therapy services and administration of viral influenza vaccines.  
25 Such rules shall require protocols to include provisions allowing  
26 for timely communication between the pharmacist and the referring  
27 physician, and any other patient protection provisions deemed  
28 appropriate by both boards. In order to take effect, such rules

1 shall be approved by a majority vote of a quorum of each board.  
2 Neither board shall separately promulgate rules regulating the  
3 use of protocols for prescription orders for medication therapy  
4 services and administration of viral influenza vaccines.

5 8. The state board of pharmacy may grant a certificate of  
6 medication therapeutic plan authority to a licensed pharmacist  
7 who submits proof of successful completion of a board-approved  
8 course of academic clinical study beyond a bachelor of science in  
9 pharmacy, including but not limited to clinical assessment  
10 skills, from a nationally accredited college or university, or a  
11 certification of equivalence issued by a nationally recognized  
12 professional organization and approved by the board of pharmacy.

13 9. Any pharmacist who has received a certificate of  
14 medication therapeutic plan authority may engage in the  
15 designing, initiating, implementing, and monitoring of a  
16 medication therapeutic plan as defined by a prescription order  
17 from a physician that is specific to each patient for care by a  
18 specific pharmacist.

19 10. Nothing in this section shall be construed to allow a  
20 pharmacist to make a therapeutic substitution of a pharmaceutical  
21 prescribed by a physician unless authorized by the written  
22 protocol or the physician's prescription order.

23 338.095. 1. The terms "prescription" and "prescription  
24 drug order" are hereby defined as a lawful order for medications  
25 or devices issued and signed by an authorized prescriber within  
26 the scope of his professional practice which is to be dispensed  
27 or administered by a pharmacist or dispensed or administered  
28 pursuant to section 334.104, RSMo, to and for the ultimate user.

1 The terms "prescription" and "drug order" do not include an order  
2 for medication requiring a prescription to be dispensed, which is  
3 provided for the immediate administration to the ultimate user or  
4 recipient.

5 2. The term "telephone prescription" is defined as an order  
6 for medications or devices transmitted to a pharmacist by  
7 telephone or similar electronic medium by an authorized  
8 prescriber or his authorized agent acting in the course of his  
9 professional practice which is to be dispensed or administered by  
10 a pharmacist or dispensed or administered pursuant to section  
11 334.104, RSMo, to and for the ultimate user. A telephone  
12 prescription shall be promptly reduced to written or electronic  
13 medium by the pharmacist and shall comply with all laws governing  
14 prescriptions and record keeping.

15 3. A licensed pharmacist may lawfully provide prescription  
16 or medical information to a licensed health care provider or his  
17 agent who is legally qualified to administer medications and  
18 treatments and who is involved in the treatment of the patient.  
19 The information may be derived by direct contact with the  
20 prescriber or through a written protocol approved by the  
21 prescriber. Such information shall authorize the provider to  
22 administer appropriate medications and treatments.

23 4. Nothing in this section shall be construed to limit the  
24 authority of other licensed health care providers to prescribe,  
25 administer, or dispense medications and treatments within the  
26 scope of their professional practice.

27 5. It is unlawful for any person other than the patient or  
28 the patient's authorized representative to accept a prescription

1 presented to be dispensed unless that person is located on a  
2 premises licensed by the board as a pharmacy.

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

6 2. The board may refuse to issue any certificate of  
7 registration or authority, permit or license, required under this  
8 chapter for one or any combination of causes stated in subsection  
9 2 of section 338.055, or the board may, as a condition to issuing  
10 or renewing any such certificate of registration or authority,  
11 permit or license, require a person to submit himself or herself  
12 for identification, intervention, treatment, or rehabilitation by  
13 the well-being committee as provided in this section. The board  
14 shall notify the applicant in writing of the reasons for the  
15 refusal and shall advise the applicant of his or her right to  
16 file a complaint with the administrative hearing commission as  
17 provided by chapter 621, RSMo.

18 3. The board may establish an impaired licensee committee,  
19 to be designated as the "Well-being Committee", to promote the  
20 early identification, intervention, treatment and rehabilitation  
21 of licensees identified within this chapter, who may be impaired  
22 by reasons of illness, substance abuse, or as a result of any  
23 physical or mental condition. The board may enter into a  
24 contractual agreement with a nonprofit corporation or an  
25 association for the purpose of creating, supporting and  
26 maintaining such a committee. The board may promulgate rules  
27 subject to the provisions of this section to effectuate and  
28 implement any committee formed under this section. The board may

1 expend appropriated funds necessary to provide for operational  
2 expenses of the committee formed under this section. Any member  
3 of the committee, as well as any administrator, staff member,  
4 consultant, agent or employee of the committee, acting within the  
5 scope of his or her duties and without actual malice and, all  
6 other persons who furnish information to the committee in good  
7 faith and without actual malice, shall not be liable for any  
8 claim of damages as a result of any statement, decision, opinion,  
9 investigation or action taken by the committee or by any  
10 individual member of the committee.

11 4. All information, interviews, reports, statements,  
12 memoranda or other documents furnished to or produced by the  
13 committee, as well as communications to or from the committee,  
14 any findings, conclusions, interventions, treatment,  
15 rehabilitation, or other proceedings of the committee which in  
16 any way pertain to a licensee who may be, or who actually is,  
17 impaired shall be absolutely privileged and confidential.

18 5. All records and proceedings of the committee which  
19 pertain or refer to a licensee who may be, or who actually is,  
20 impaired shall be privileged and confidential and shall be used  
21 by the committee and its members only in the exercise of the  
22 proper function of the committee and shall not be considered  
23 public records under chapter 610, RSMo, and shall only be subject  
24 to discovery or introduction as evidence in any civil, criminal,  
25 or administrative proceedings except as provided in subsection 6  
26 of this section.

27 6. The committee may disclose information relative to an  
28 impaired licensee only when:

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

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

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

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

10 7. In lieu of the pursuing discipline against a licensee  
11 for violating one or more causes stated in subsection 2 of  
12 section 338.055, the board may enter into a diversion agreement  
13 with a licensee to refer the licensee to the committee under such  
14 terms and conditions as are agreed to by the board and licensee.  
15 The board shall enter into no more than two diversion agreements  
16 with any individual licensee. If the licensee violates a term or  
17 condition of a diversion agreement entered into under this  
18 section, the board may elect to pursue discipline against the  
19 licensee under chapter 621, RSMo, for the original conduct that  
20 resulted in the diversion agreement, or for any subsequent  
21 violation of subsection 2 of section 338.055. While the licensee  
22 participates in the committee, the time limitations of section  
23 620.154, RSMo, shall toll under subsection 7 of section 620.154,  
24 RSMo. All records pertaining to diversion agreements are  
25 confidential and may only be released under subdivision (7) of  
26 subsection 14 of section 620.010, RSMo.

27 8. The committee shall report to the board the name of any  
28 licensee who fails to enter treatment within forty-eight hours

1 following the provider's determination that the pharmacist needs  
2 treatment or any failure by a licensee to comply with the terms  
3 of a treatment contract during inpatient or outpatient treatment  
4 or aftercare or report a licensee who resumes the practice of  
5 pharmacy before the treatment provider has made a clear  
6 determination that the pharmacist is capable of practicing  
7 according to acceptable and prevailing standards.

8 9. The board may disclose information and records to the  
9 committee to assist the committee in the identification,  
10 intervention, treatment, and rehabilitation of any licensee who  
11 may be impaired by reason of illness, substance abuse, or as the  
12 result of any physical or mental condition. The committee shall  
13 keep all information and records provided by the board  
14 confidential to the extent the board is required to treat the  
15 information and records as closed to the public under chapter  
16 620, RSMo.

17 10. Any rule or portion of a rule, as that term is defined  
18 in section 536.010, RSMo, that is created under the authority  
19 delegated in this section shall become effective only if it  
20 complies with and is subject to all of the provisions of chapter  
21 536, RSMo, and, if applicable, section 536.028, RSMo. This  
22 section and chapter 536, RSMo, are nonseverable and if any of the  
23 powers vested with the general assembly pursuant to chapter 536,  
24 RSMo, to review, to delay the effective date, or to disapprove  
25 and annul a rule are subsequently held unconstitutional, then the  
26 grant of rulemaking authority and any rule proposed or adopted  
27 after August 28, 2006, shall be invalid and void.