

FIRST REGULAR SESSION

HOUSE BILL NO. 705

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BROWN (149) (Sponsor), GUERNSEY, FRANZ,
SCHLOTTACH, DENISON, LAIR, WELLS, FLANIGAN, SMITH (150) AND SCHAD (Co-sponsors).

1319L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 340.276, RSMo, and to enact in lieu thereof one new section relating to the practice of veterinary medicine, with penalty provisions.

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

Section A. Section 340.276, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 340.276, to read as follows:

340.276. 1. [Upon application by the board, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practice for which a license, certificate, permit or other authority is required by sections 340.200 to 340.330 upon a showing that such acts or practices were performed or offered to be performed without a license, certificate, permit or other authority; or

(2) Engaging in any practice authorized by a license, certificate, permit or other authority issued pursuant to sections 340.200 to 340.330 upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of the state or client or patient of the licensee.

2. Any such action shall be commenced either in the county in which such conduct occurred or in the county where the defendant resides. Any action brought under this section shall be in addition to and not in lieu of any penalty or other discipline provided for by sections 340.200 to 340.330 and may be brought concurrently with other actions to enforce sections 340.200 to 340.330.] **Any person who engages in the practice of veterinary medicine, as**

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.

17 defined in section 340.200, or who holds himself or herself out as able to practice veterinary
18 medicine and who is not the holder of a current valid license, certificate, permit, or other
19 authority issued in this state, and who is not exempt under section 340.216 from holding
20 such a license, certificate, permit, or other authority is guilty of a class A misdemeanor.

21 2. The board may cause a complaint to be filed with the administrative hearing
22 commission, as provided in chapter 621, RSMo, against any unlicensed person who
23 engaged, offers to engage, or is engaging in the performance of any acts or practice for
24 which a license, certificate, permit, or other authority is required under sections 340.200
25 to 340.330 upon a showing that such acts or practices were performed or offered to be
26 performed without a license, certificate, permit, or other authority.

27 3. When reviewing complaints against unlicensed persons, the board may initiate
28 an investigation and take all measures necessary to find the facts of any potential violation,
29 including issuing subpoenas to compel the attendance and testimony of witnesses and the
30 disclosure of evidence, and may request the attorney general to bring an action to enforce
31 the subpoena.

32 4. In addition to the penalty and complaint provisions in subsections 1 and 2 of this
33 section, the board may issue to an unlicensed person an order imposing a civil penalty or
34 order to cease and desist from the practice of veterinary medicine. Such penalty or order
35 shall not be imposed until the findings of fact and conclusions of law by the administrative
36 hearing commission have been delivered to the board in accordance with section 621.110,
37 RSMo. No penalty or order under this subsection shall commence until a formal meeting
38 and vote by the board has been taken to impose such a penalty or issued such an order.

39 5. A civil penalty imposed under this section shall not exceed five thousand dollars
40 for each offense. Each day of a continued violation constitutes a separate offense, with a
41 maximum penalty of twenty-five thousand dollars. In determining the amount of penalty
42 to be imposed, the board may consider any of the following:

- 43 (1) Whether the amount imposed will be a substantial deterrent to the violation;
- 44 (2) The circumstances leading to the violation;
- 45 (3) Whether the violator unlawfully administered, dispensed, or prescribed any
46 medicine, drug, controlled substance or biologic;
- 47 (4) The severity of the violation and the risk of harm to the public health, whether
48 animal or human;
- 49 (5) The economic benefits gained by the violator as a result of noncompliance;
- 50 (6) Whether the violator has failed to pay a prior civil penalty issued by the board;
- 51 (7) Whether the violator has violated any prior order of the board to cease and
52 desist;

53 (8) Whether the violator has been found to have engaged in the unlawful practice
54 of veterinary medicine in any other state by a court or governmental agency of competent
55 jurisdiction or authority therein; and

56 (9) The interest of the public.

57 6. Any final order imposing a civil penalty or commanding an unlicensed person
58 to cease and desist from the unlawful practice of veterinary medicine is subject to judicial
59 review upon the filing of a petition under section 536.100, RSMo, by any person subject to
60 the penalty or order.

61 7. Payment of a civil penalty shall be made within sixty days of filing the order or,
62 if the order is stayed pending an appeal, within ten days after the court enters a final
63 judgment in favor of the board. If the penalty is not timely paid, the board shall notify the
64 attorney general and the attorney general may commence an action to recover the amount
65 of the penalty, including reasonable attorney fees and costs, and a surcharge of fifteen
66 percent of the penalty plus ten percent per annum on any amounts owed. In such action,
67 the validity and appropriateness of the final order imposing the civil penalty or a final
68 order to cease and desist shall not be subject to review.

69 8. An action to enforce an order under this section may be joined with an action for
70 an injunction.

71 9. Any offer of settlement to resolve a civil penalty or cease and desist order under
72 this section shall:

73 (1) Be in writing;

74 (2) State that an action for imposition of a civil penalty or to cease and desist may
75 be initiated by the attorney general on behalf of the board under this section; and

76 (3) Identify any dollar amount or activities that the unlicensed person is to cease
77 and desist as an offer of settlement.

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79 Such offer of settlement shall be negotiated in good faith through conference, conciliation,
80 and persuasion.

81 10. Penalties collected under this section shall be handled in accordance with
82 section 7 of article IX of the Missouri Constitution. Penalties under this section shall not
83 be considered a charitable contribution for tax purposes.

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