

FIRST REGULAR SESSION

# HOUSE BILL NO. 293

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EVANS (99).

0789H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 195.060, 196.100, 221.111, 338.015, 338.055, and 338.056, RSMo, and to enact in lieu thereof seven new sections relating to electronic prescriptions, with a penalty provision.

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

Section A. Sections 195.060, 196.100, 221.111, 338.015, 338.055, and 338.056, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 195.060, 195.550, 196.100, 221.111, 338.015, 338.055, and 338.056 to read as follows:

195.060. 1. Except as provided in subsection 4 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health and senior services. All written prescriptions shall be signed by the person prescribing the same, **except for electronic prescriptions**. All prescriptions shall be dated on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he or she is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall either write the date of filling and his or her own signature on the prescription or retain the date of filling and the identity of the dispenser as electronic prescription information. The prescription or electronic prescription information shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public

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.

16 officer or employee engaged in the enforcement of this law. No prescription for a drug in  
17 Schedule I or II shall be filled more than six months after the date prescribed; no prescription for  
18 a drug in Schedule I or II shall be refilled; no prescription for a drug in Schedule III or IV shall  
19 be filled or refilled more than six months after the date of the original prescription or be refilled  
20 more than five times unless renewed by the practitioner.

21 2. A pharmacist, in good faith, may sell and dispense controlled substances to any person  
22 upon a prescription of a practitioner located in another state, provided that the:

23 (1) Prescription was issued according to and in compliance with the applicable laws of  
24 that state and the United States; and

25 (2) Quantity limitations in subsection 4 of section 195.080 apply to prescriptions  
26 dispensed to patients located in this state.

27 3. The legal owner of any stock of controlled substances in a pharmacy, upon  
28 discontinuance of dealing in such drugs, may sell the stock to a manufacturer, wholesaler, or  
29 pharmacist, but only on an official written order.

30 4. A pharmacist, in good faith, may sell and dispense any Schedule II drug or drugs to  
31 any person in emergency situations as defined by rule of the department of health and senior  
32 services upon an oral prescription by an authorized practitioner.

33 5. Except where a bona fide physician-patient-pharmacist relationship exists,  
34 prescriptions for narcotics or hallucinogenic drugs shall not be delivered to or for an ultimate  
35 user or agent by mail or other common carrier.

**195.550. 1. Notwithstanding any other provision of this section or any other law  
2 to the contrary, beginning August 28, 2020, no person shall issue any prescription in this  
3 state unless the prescription is made by electronic prescription from the person issuing the  
4 prescription to a pharmacy, except for prescriptions:**

5 **(1) Issued by veterinarians;**

6 **(2) Issued in circumstances where electronic prescribing is not available due to  
7 temporary technological or electrical failure;**

8 **(3) Issued by a practitioner to be dispensed by a pharmacy located outside the state;**

9 **(4) Issued when the prescriber and dispenser are the same entity;**

10 **(5) Issued that include elements that are not supported by the most recently  
11 implemented version of the National Council for Prescription Drug Programs  
12 Prescriber/Pharmacist Interface SCRIPT Standard;**

13 **(6) Issued by a practitioner for a drug that the federal Food and Drug  
14 Administration requires the prescription to contain certain elements that are not able to  
15 be accomplished with electronic processing;**

16           (7) Issued by a practitioner allowing for the dispensing of a nonpatient specific  
17 prescription pursuant to a standing order, approved protocol for drug therapy,  
18 collaborative drug management or comprehensive medication management, in response  
19 to a public health emergency, or other circumstances where the practitioner may issue a  
20 nonpatient specific prescription;

21           (8) Issued by a practitioner prescribing a drug under a research protocol;

22           (9) Issued by practitioners who have received a waiver or a renewal thereof for a  
23 specified period determined by the commissioner, not to exceed one year, from the  
24 requirement to use electronic prescribing, pursuant to a process established in regulation  
25 by the department of health and senior services, due to economic hardship, technological  
26 limitations that are not reasonably within the control of the practitioner, or other  
27 exceptional circumstance demonstrated by the practitioner;

28           (10) Issued by a practitioner under circumstances where, notwithstanding the  
29 practitioner's present ability to make an electronic prescription as required by this  
30 subsection, such practitioner reasonably determines that it would be impractical for the  
31 patient to obtain substances prescribed by electronic prescription in a timely manner, and  
32 such delay would adversely impact the patient's medical condition.

33           2. A pharmacist who receives a written, oral, or faxed prescription is not required  
34 to verify that the prescription properly falls under one of the exceptions from the  
35 requirement to electronically prescribe. Pharmacists may continue to dispense medications  
36 from otherwise valid written, oral, or fax prescriptions that are consistent with current  
37 laws and regulations.

38           3. An individual who violates this section commits a civil violation for which a fine  
39 of two hundred and fifty dollars per violation, not to exceed five thousand dollars per  
40 calendar year, may be assessed. The department of health and senior services is  
41 responsible for the enforcement of this section.

196.100. 1. Any manufacturer, packer, distributor or seller of drugs or devices in this  
2 state shall comply with the current federal labeling requirements contained in the Federal Food,  
3 Drug and Cosmetic Act, as amended, and any federal regulations promulgated thereunder. Any  
4 drug or device which contains labeling that is not in compliance with the provisions of this  
5 section shall be deemed misbranded.

6           2. A drug dispensed on **an electronic prescription** or a written prescription signed by  
7 a licensed physician, dentist, or veterinarian, except a drug dispensed in the course of the conduct  
8 of a business of dispensing drugs pursuant to a diagnosis by mail, shall be exempt from the  
9 requirements of this section if such physician, dentist, or veterinarian is licensed by law to  
10 administer such drug, and such drug bears a label containing the name and place of business of

11 the dispenser, the serial number and date of such prescription, and the name of such physician,  
12 dentist, or veterinarian.

13 3. The department is hereby directed to promulgate regulations exempting from any  
14 labeling or packaging requirement of sections 196.010 to 196.120, drugs and devices which are,  
15 in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial  
16 quantities at establishments other than those where originally processed or packed, on condition  
17 that such drugs and devices are not adulterated or misbranded under the provisions of said  
18 sections upon removal from such processing, labeling, or repacking establishment.

221.111. 1. A person commits the offense of possession of unlawful items in a prison  
2 or jail if such person knowingly delivers, attempts to deliver, possesses, deposits, or conceals in  
3 or about the premises of any correctional center as the term "correctional center" is defined under  
4 section 217.010, or any city, county, or private jail:

5 (1) Any controlled substance as that term is defined by law, except upon the written **or**  
6 **electronic** prescription of a licensed physician, dentist, or veterinarian;

7 (2) Any other alkaloid of any kind or any intoxicating liquor as the term intoxicating  
8 liquor is defined in section 311.020;

9 (3) Any article or item of personal property which a prisoner is prohibited by law, by rule  
10 made pursuant to section 221.060, or by regulation of the department of corrections from  
11 receiving or possessing, except as herein provided;

12 (4) Any gun, knife, weapon, or other article or item of personal property that may be  
13 used in such manner as to endanger the safety or security of the institution or as to endanger the  
14 life or limb of any prisoner or employee thereof.

15 2. The violation of subdivision (1) of subsection 1 of this section shall be a class D  
16 felony; the violation of subdivision (2) of this section shall be a class E felony; the violation of  
17 subdivision (3) of this section shall be a class A misdemeanor; and the violation of subdivision  
18 (4) of this section shall be a class B felony.

19 3. The chief operating officer of a county or city jail or other correctional facility or the  
20 administrator of a private jail may deny visitation privileges to or refer to the county prosecuting  
21 attorney for prosecution any person who knowingly delivers, attempts to deliver, possesses,  
22 deposits, or conceals in or about the premises of such jail or facility any personal item which is  
23 prohibited by rule or regulation of such jail or facility. Such rules or regulations, including a list  
24 of personal items allowed in the jail or facility, shall be prominently posted for viewing both  
25 inside and outside such jail or facility in an area accessible to any visitor, and shall be made  
26 available to any person requesting such rule or regulation. Violation of this subsection shall be  
27 an infraction if not covered by other statutes.

28           4. Any person who has been found guilty of a violation of subdivision (2) of subsection  
29 1 of this section involving any alkaloid shall be entitled to expungement of the record of the  
30 violation. The procedure to expunge the record shall be pursuant to section 610.123. The record  
31 of any person shall not be expunged if such person has been found guilty of knowingly  
32 delivering, attempting to deliver, possessing, depositing, or concealing any alkaloid of any  
33 controlled substance in or about the premises of any correctional center, or city or county jail,  
34 or private prison or jail.

          338.015. 1. The provisions of sections 338.010 to 338.015 shall not be construed to  
2 inhibit the patient's freedom of choice to obtain prescription services from any licensed  
3 pharmacist. However, nothing in sections 338.010 to 338.315 abrogates the patient's ability to  
4 waive freedom of choice under any contract with regard to payment or coverage of prescription  
5 expense.

6           2. All pharmacists may provide pharmaceutical consultation and advice to persons  
7 concerning the safe and therapeutic use of their prescription drugs.

8           3. All patients shall have the right to receive a written prescription from their prescriber  
9 to take to the facility of their choice **or to have an electronic prescription transmitted to the**  
10 **facility of their choice.**

          338.055. 1. The board may refuse to issue any certificate of registration or authority,  
2 permit or license required pursuant to this chapter for one or any combination of causes stated  
3 in subsection 2 of this section or if the designated pharmacist-in-charge, manager-in-charge, or  
4 any officer, owner, manager, or controlling shareholder of the applicant has committed any act  
5 or practice in subsection 2 of this section. The board shall notify the applicant in writing of the  
6 reasons for the refusal and shall advise the applicant of his or her right to file a complaint with  
7 the administrative hearing commission as provided by chapter 621.

8           2. The board may cause a complaint to be filed with the administrative hearing  
9 commission as provided by chapter 621 against any holder of any certificate of registration or  
10 authority, permit or license required by this chapter or any person who has failed to renew or has  
11 surrendered his or her certificate of registration or authority, permit or license for any one or any  
12 combination of the following causes:

13           (1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to  
14 an extent that such use impairs a person's ability to perform the work of any profession licensed  
15 or regulated by this chapter;

16           (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty  
17 or nolo contendere, in a criminal prosecution under the laws of any state or of the United States,  
18 for any offense reasonably related to the qualifications, functions or duties of any profession  
19 licensed or regulated under this chapter, for any offense an essential element of which is fraud,

20 dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not  
21 sentence is imposed;

22 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of  
23 registration or authority, permit or license issued pursuant to this chapter or in obtaining  
24 permission to take any examination given or required pursuant to this chapter;

25 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by  
26 fraud, deception or misrepresentation;

27 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty  
28 in the performance of the functions or duties of any profession licensed or regulated by this  
29 chapter;

30 (6) Violation of, or assisting or enabling any person to violate, any provision of this  
31 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

32 (7) Impersonation of any person holding a certificate of registration or authority, permit  
33 or license or allowing any person to use his or her certificate of registration or authority, permit,  
34 license, or diploma from any school;

35 (8) Denial of licensure to an applicant or disciplinary action against an applicant or the  
36 holder of a license or other right to practice any profession regulated by this chapter granted by  
37 another state, territory, federal agency, or country whether or not voluntarily agreed to by the  
38 licensee or applicant, including, but not limited to, surrender of the license upon grounds for  
39 which denial or discipline is authorized in this state;

40 (9) A person is finally adjudged incapacitated by a court of competent jurisdiction;

41 (10) Assisting or enabling any person to practice or offer to practice any profession  
42 licensed or regulated by this chapter who is not registered and currently eligible to practice under  
43 this chapter;

44 (11) Issuance of a certificate of registration or authority, permit or license based upon  
45 a material mistake of fact;

46 (12) Failure to display a valid certificate or license if so required by this chapter or any  
47 rule promulgated hereunder;

48 (13) Violation of any professional trust or confidence;

49 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to  
50 the general public or persons to whom the advertisement or solicitation is primarily directed;

51 (15) Violation of the drug laws or rules and regulations of this state, any other state or  
52 the federal government;

53 (16) The intentional act of substituting or otherwise changing the content, formula or  
54 brand of any drug prescribed by written, **electronic**, or oral prescription without prior written or  
55 oral approval from the prescriber for the respective change in each prescription; provided,

56 however, that nothing contained herein shall prohibit a pharmacist from substituting or changing  
57 the brand of any drug as provided under section 338.056, and any such substituting or changing  
58 of the brand of any drug as provided for in section 338.056 shall not be deemed unprofessional  
59 or dishonorable conduct unless a violation of section 338.056 occurs;

60 (17) Personal use or consumption of any controlled substance unless it is prescribed,  
61 dispensed, or administered by a health care provider who is authorized by law to do so.

62 3. After the filing of such complaint, the proceedings shall be conducted in accordance  
63 with the provisions of chapter 621. Upon a finding by the administrative hearing commission  
64 that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the  
65 board may, singly or in combination, censure or place the person named in the complaint on  
66 probation on such terms and conditions as the board deems appropriate for a period not to exceed  
67 five years, or may suspend, for a period not to exceed three years, or revoke the license,  
68 certificate, or permit. The board may impose additional discipline on a licensee, registrant, or  
69 permittee found to have violated any disciplinary terms previously imposed under this section  
70 or by agreement. The additional discipline may include, singly or in combination, censure,  
71 placing the licensee, registrant, or permittee named in the complaint on additional probation on  
72 such terms and conditions as the board deems appropriate, which additional probation shall not  
73 exceed five years, or suspension for a period not to exceed three years, or revocation of the  
74 license, certificate, or permit.

75 4. If the board concludes that a licensee or registrant has committed an act or is engaging  
76 in a course of conduct which would be grounds for disciplinary action which constitutes a clear  
77 and present danger to the public health and safety, the board may file a complaint before the  
78 administrative hearing commission requesting an expedited hearing and specifying the activities  
79 which give rise to the danger and the nature of the proposed restriction or suspension of the  
80 licensee's or registrant's license. Within fifteen days after service of the complaint on the  
81 licensee or registrant, the administrative hearing commission shall conduct a preliminary hearing  
82 to determine whether the alleged activities of the licensee or registrant appear to constitute a  
83 clear and present danger to the public health and safety which justify that the licensee's or  
84 registrant's license or registration be immediately restricted or suspended. The burden of proving  
85 that the actions of a licensee or registrant constitute a clear and present danger to the public  
86 health and safety shall be upon the state board of pharmacy. The administrative hearing  
87 commission shall issue its decision immediately after the hearing and shall either grant to the  
88 board the authority to suspend or restrict the license or dismiss the action.

89 5. If the administrative hearing commission grants temporary authority to the board to  
90 restrict or suspend the licensee's or registrant's license, such temporary authority of the board  
91 shall become final authority if there is no request by the licensee or registrant for a full hearing

92 within thirty days of the preliminary hearing. The administrative hearing commission shall, if  
93 requested by the licensee or registrant named in the complaint, set a date to hold a full hearing  
94 under the provisions of chapter 621 regarding the activities alleged in the initial complaint filed  
95 by the board.

96 6. If the administrative hearing commission dismisses the action filed by the board  
97 pursuant to subsection 4 of this section, such dismissal shall not bar the board from initiating a  
98 subsequent action on the same grounds.

338.056. 1. Except as provided in subsection 2 of this section, the pharmacist filling  
2 prescription orders for drug products prescribed by trade or brand name may select another drug  
3 product with the same active chemical ingredients of the same strength, quantity and dosage  
4 form, and of the same generic drug or interchangeable biological product type, as determined by  
5 the United States Adopted Names and accepted by the Federal Food and Drug Administration.  
6 Selection pursuant to this section is within the discretion of the pharmacist, except as provided  
7 in subsection 2 of this section. The pharmacist who selects the drug or interchangeable  
8 biological product to be dispensed pursuant to this section shall assume the same responsibility  
9 for selecting the dispensed drug or biological product as would be incurred in filling a  
10 prescription for a drug or interchangeable biological product prescribed by generic or  
11 interchangeable biologic name. The pharmacist shall not select a drug or interchangeable  
12 biological product pursuant to this section unless the product selected costs the patient less than  
13 the prescribed product.

14 2. A pharmacist who receives a prescription for a brand name drug or biological product  
15 may select a less expensive generically equivalent or interchangeable biological product unless:

16 (1) The patient requests a brand name drug or biological product; or

17 (2) The prescribing practitioner indicates that substitution is prohibited or displays  
18 "brand medically necessary", "dispense as written", "do not substitute", "DAW", or words of  
19 similar import on the prescription.

20 3. No prescription shall be valid without the signature of the prescriber, **except an**  
21 **electronic prescription.**

22 4. If an oral prescription is involved, the practitioner or the practitioner's agent,  
23 communicating the instructions to the pharmacist, shall instruct the pharmacist as to whether or  
24 not a therapeutically equivalent generic drug or interchangeable biological product may be  
25 substituted. The pharmacist shall note the instructions on the file copy of the prescription.

26 5. Notwithstanding the provisions of subsection 2 of this section to the contrary, a  
27 pharmacist may fill a prescription for a brand name drug by substituting a generically equivalent  
28 drug or interchangeable biological product when substitution is allowed in accordance with the  
29 laws of the state where the prescribing practitioner is located.

30 6. Violations of this section are infractions.

✓