

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 284

96TH GENERAL ASSEMBLY

2011

1412S.05T

AN ACT

To repeal sections 144.030, 338.055, and 338.330, RSMo, and to enact in lieu thereof three new sections relating to pharmacy, with an emergency clause for a certain section.

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

Section A. Sections 144.030, 338.055, and 338.330, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 144.030,
3 338.055, and 338.330, to read as follows:

144.030. 1. There is hereby specifically exempted from the provisions of
2 sections 144.010 to 144.525 and from the computation of the tax levied, assessed
3 or payable pursuant to sections 144.010 to 144.525 such retail sales as may be
4 made in commerce between this state and any other state of the United States,
5 or between this state and any foreign country, and any retail sale which the state
6 of Missouri is prohibited from taxing pursuant to the Constitution or laws of the
7 United States of America, and such retail sales of tangible personal property
8 which the general assembly of the state of Missouri is prohibited from taxing or
9 further taxing by the constitution of this state.

10 2. There are also specifically exempted from the provisions of the local
11 sales tax law as defined in section 32.085, section 238.235, and sections 144.010
12 to 144.525 and 144.600 to 144.761 and from the computation of the tax levied,
13 assessed or payable pursuant to the local sales tax law as defined in section
14 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to 144.745:

15 (1) Motor fuel or special fuel subject to an excise tax of this state, unless

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 all or part of such excise tax is refunded pursuant to section 142.824; or upon the
17 sale at retail of fuel to be consumed in manufacturing or creating gas, power,
18 steam, electrical current or in furnishing water to be sold ultimately at retail; or
19 feed for livestock or poultry; or grain to be converted into foodstuffs which are to
20 be sold ultimately in processed form at retail; or seed, limestone or fertilizer
21 which is to be used for seeding, liming or fertilizing crops which when harvested
22 will be sold at retail or will be fed to livestock or poultry to be sold ultimately in
23 processed form at retail; economic poisons registered pursuant to the provisions
24 of the Missouri pesticide registration law (sections 281.220 to 281.310) which are
25 to be used in connection with the growth or production of crops, fruit trees or
26 orchards applied before, during, or after planting, the crop of which when
27 harvested will be sold at retail or will be converted into foodstuffs which are to
28 be sold ultimately in processed form at retail;

29 (2) Materials, manufactured goods, machinery and parts which when used
30 in manufacturing, processing, compounding, mining, producing or fabricating
31 become a component part or ingredient of the new personal property resulting
32 from such manufacturing, processing, compounding, mining, producing or
33 fabricating and which new personal property is intended to be sold ultimately for
34 final use or consumption; and materials, including without limitation, gases and
35 manufactured goods, including without limitation slagging materials and
36 firebrick, which are ultimately consumed in the manufacturing process by
37 blending, reacting or interacting with or by becoming, in whole or in part,
38 component parts or ingredients of steel products intended to be sold ultimately
39 for final use or consumption;

40 (3) Materials, replacement parts and equipment purchased for use directly
41 upon, and for the repair and maintenance or manufacture of, motor vehicles,
42 watercraft, railroad rolling stock or aircraft engaged as common carriers of
43 persons or property;

44 (4) Replacement machinery, equipment, and parts and the materials and
45 supplies solely required for the installation or construction of such replacement
46 machinery, equipment, and parts, used directly in manufacturing, mining,
47 fabricating or producing a product which is intended to be sold ultimately for
48 final use or consumption; and machinery and equipment, and the materials and
49 supplies required solely for the operation, installation or construction of such
50 machinery and equipment, purchased and used to establish new, or to replace or
51 expand existing, material recovery processing plants in this state. For the

52 purposes of this subdivision, a "material recovery processing plant" means a
53 facility that has as its primary purpose the recovery of materials into a useable
54 product or a different form which is used in producing a new product and shall
55 include a facility or equipment which are used exclusively for the collection of
56 recovered materials for delivery to a material recovery processing plant but shall
57 not include motor vehicles used on highways. For purposes of this section, the
58 terms motor vehicle and highway shall have the same meaning pursuant to
59 section 301.010. Material recovery is not the reuse of materials within a
60 manufacturing process or the use of a product previously recovered. The material
61 recovery processing plant shall qualify under the provisions of this section
62 regardless of ownership of the material being recovered;

63 (5) Machinery and equipment, and parts and the materials and supplies
64 solely required for the installation or construction of such machinery and
65 equipment, purchased and used to establish new or to expand existing
66 manufacturing, mining or fabricating plants in the state if such machinery and
67 equipment is used directly in manufacturing, mining or fabricating a product
68 which is intended to be sold ultimately for final use or consumption;

69 (6) Tangible personal property which is used exclusively in the
70 manufacturing, processing, modification or assembling of products sold to the
71 United States government or to any agency of the United States government;

72 (7) Animals or poultry used for breeding or feeding purposes;

73 (8) Newsprint, ink, computers, photosensitive paper and film, toner,
74 printing plates and other machinery, equipment, replacement parts and supplies
75 used in producing newspapers published for dissemination of news to the general
76 public;

77 (9) The rentals of films, records or any type of sound or picture
78 transcriptions for public commercial display;

79 (10) Pumping machinery and equipment used to propel products delivered
80 by pipelines engaged as common carriers;

81 (11) Railroad rolling stock for use in transporting persons or property in
82 interstate commerce and motor vehicles licensed for a gross weight of twenty-four
83 thousand pounds or more or trailers used by common carriers, as defined in
84 section 390.020, in the transportation of persons or property;

85 (12) Electrical energy used in the actual primary manufacture, processing,
86 compounding, mining or producing of a product, or electrical energy used in the
87 actual secondary processing or fabricating of the product, or a material recovery

88 processing plant as defined in subdivision (4) of this subsection, in facilities
89 owned or leased by the taxpayer, if the total cost of electrical energy so used
90 exceeds ten percent of the total cost of production, either primary or secondary,
91 exclusive of the cost of electrical energy so used or if the raw materials used in
92 such processing contain at least twenty-five percent recovered materials as
93 defined in section 260.200. There shall be a rebuttable presumption that the raw
94 materials used in the primary manufacture of automobiles contain at least
95 twenty-five percent recovered materials. For purposes of this subdivision,
96 "processing" means any mode of treatment, act or series of acts performed upon
97 materials to transform and reduce them to a different state or thing, including
98 treatment necessary to maintain or preserve such processing by the producer at
99 the production facility;

100 (13) Anodes which are used or consumed in manufacturing, processing,
101 compounding, mining, producing or fabricating and which have a useful life of
102 less than one year;

103 (14) Machinery, equipment, appliances and devices purchased or leased
104 and used solely for the purpose of preventing, abating or monitoring air pollution,
105 and materials and supplies solely required for the installation, construction or
106 reconstruction of such machinery, equipment, appliances and devices;

107 (15) Machinery, equipment, appliances and devices purchased or leased
108 and used solely for the purpose of preventing, abating or monitoring water
109 pollution, and materials and supplies solely required for the installation,
110 construction or reconstruction of such machinery, equipment, appliances and
111 devices;

112 (16) Tangible personal property purchased by a rural water district;

113 (17) All amounts paid or charged for admission or participation or other
114 fees paid by or other charges to individuals in or for any place of amusement,
115 entertainment or recreation, games or athletic events, including museums, fairs,
116 zoos and planetariums, owned or operated by a municipality or other political
117 subdivision where all the proceeds derived therefrom benefit the municipality or
118 other political subdivision and do not inure to any private person, firm, or
119 corporation;

120 (18) All sales of insulin and prosthetic or orthopedic devices as defined on
121 January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the
122 Social Security Act of 1965, including the items specified in Section 1862(a)(12)
123 of that act, and also specifically including hearing aids and hearing aid supplies

124 and all sales of drugs which may be legally dispensed by a licensed pharmacist
125 only upon a lawful prescription of a practitioner licensed to administer those
126 items, including samples and materials used to manufacture samples which may
127 be dispensed by a practitioner authorized to dispense such samples and all sales
128 **or rental** of medical oxygen, home respiratory equipment and accessories,
129 hospital beds and accessories and ambulatory aids, all sales **or rental** of manual
130 and powered wheelchairs, stairway lifts, Braille writers, electronic Braille
131 equipment and, if purchased **or rented** by or on behalf of a person with one or
132 more physical or mental disabilities to enable them to function more
133 independently, all sales **or rental** of scooters, reading machines, electronic print
134 enlargers and magnifiers, electronic alternative and augmentative communication
135 devices, and items used solely to modify motor vehicles to permit the use of such
136 motor vehicles by individuals with disabilities or sales of over-the-counter or
137 nonprescription drugs to individuals with disabilities, **and drugs required by**
138 **the Food and Drug Administration to meet the over-the-counter drug**
139 **product labeling requirements in 21 CFR 201.66, or its successor, as**
140 **prescribed by a health care practitioner licensed to prescribe;**

141 (19) All sales made by or to religious and charitable organizations and
142 institutions in their religious, charitable or educational functions and activities
143 and all sales made by or to all elementary and secondary schools operated at
144 public expense in their educational functions and activities;

145 (20) All sales of aircraft to common carriers for storage or for use in
146 interstate commerce and all sales made by or to not-for-profit civic, social, service
147 or fraternal organizations, including fraternal organizations which have been
148 declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the
149 1986 Internal Revenue Code, as amended, in their civic or charitable functions
150 and activities and all sales made to eleemosynary and penal institutions and
151 industries of the state, and all sales made to any private not-for-profit institution
152 of higher education not otherwise excluded pursuant to subdivision (19) of this
153 subsection or any institution of higher education supported by public funds, and
154 all sales made to a state relief agency in the exercise of relief functions and
155 activities;

156 (21) All ticket sales made by benevolent, scientific and educational
157 associations which are formed to foster, encourage, and promote progress and
158 improvement in the science of agriculture and in the raising and breeding of
159 animals, and by nonprofit summer theater organizations if such organizations are

160 exempt from federal tax pursuant to the provisions of the Internal Revenue Code
161 and all admission charges and entry fees to the Missouri state fair or any fair
162 conducted by a county agricultural and mechanical society organized and
163 operated pursuant to sections 262.290 to 262.530;

164 (22) All sales made to any private not-for-profit elementary or secondary
165 school, all sales of feed additives, medications or vaccines administered to
166 livestock or poultry in the production of food or fiber, all sales of pesticides used
167 in the production of crops, livestock or poultry for food or fiber, all sales of
168 bedding used in the production of livestock or poultry for food or fiber, all sales
169 of propane or natural gas, electricity or diesel fuel used exclusively for drying
170 agricultural crops, natural gas used in the primary manufacture or processing of
171 fuel ethanol as defined in section 142.028, natural gas, propane, and electricity
172 used by an eligible new generation cooperative or an eligible new generation
173 processing entity as defined in section 348.432, and all sales of farm machinery
174 and equipment, other than airplanes, motor vehicles and trailers. As used in this
175 subdivision, the term "feed additives" means tangible personal property which,
176 when mixed with feed for livestock or poultry, is to be used in the feeding of
177 livestock or poultry. As used in this subdivision, the term "pesticides" includes
178 adjuvants such as crop oils, surfactants, wetting agents and other assorted
179 pesticide carriers used to improve or enhance the effect of a pesticide and the
180 foam used to mark the application of pesticides and herbicides for the production
181 of crops, livestock or poultry. As used in this subdivision, the term "farm
182 machinery and equipment" means new or used farm tractors and such other new
183 or used farm machinery and equipment and repair or replacement parts thereon,
184 and supplies and lubricants used exclusively, solely, and directly for producing
185 crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for
186 producing milk for ultimate sale at retail, including field drain tile, and one-half
187 of each purchaser's purchase of diesel fuel therefor which is:

188 (a) Used exclusively for agricultural purposes;

189 (b) Used on land owned or leased for the purpose of producing farm
190 products; and

191 (c) Used directly in producing farm products to be sold ultimately in
192 processed form or otherwise at retail or in producing farm products to be fed to
193 livestock or poultry to be sold ultimately in processed form at retail;

194 (23) Except as otherwise provided in section 144.032, all sales of metered
195 water service, electricity, electrical current, natural, artificial or propane gas,

196 wood, coal or home heating oil for domestic use and in any city not within a
197 county, all sales of metered or unmetered water service for domestic use:

198 (a) "Domestic use" means that portion of metered water service,
199 electricity, electrical current, natural, artificial or propane gas, wood, coal or
200 home heating oil, and in any city not within a county, metered or unmetered
201 water service, which an individual occupant of a residential premises uses for
202 nonbusiness, noncommercial or nonindustrial purposes. Utility service through
203 a single or master meter for residential apartments or condominiums, including
204 service for common areas and facilities and vacant units, shall be deemed to be
205 for domestic use. Each seller shall establish and maintain a system whereby
206 individual purchases are determined as exempt or nonexempt;

207 (b) Regulated utility sellers shall determine whether individual purchases
208 are exempt or nonexempt based upon the seller's utility service rate
209 classifications as contained in tariffs on file with and approved by the Missouri
210 public service commission. Sales and purchases made pursuant to the rate
211 classification "residential" and sales to and purchases made by or on behalf of the
212 occupants of residential apartments or condominiums through a single or master
213 meter, including service for common areas and facilities and vacant units, shall
214 be considered as sales made for domestic use and such sales shall be exempt from
215 sales tax. Sellers shall charge sales tax upon the entire amount of purchases
216 classified as nondomestic use. The seller's utility service rate classification and
217 the provision of service thereunder shall be conclusive as to whether or not the
218 utility must charge sales tax;

219 (c) Each person making domestic use purchases of services or property
220 and who uses any portion of the services or property so purchased for a
221 nondomestic use shall, by the fifteenth day of the fourth month following the year
222 of purchase, and without assessment, notice or demand, file a return and pay
223 sales tax on that portion of nondomestic purchases. Each person making
224 nondomestic purchases of services or property and who uses any portion of the
225 services or property so purchased for domestic use, and each person making
226 domestic purchases on behalf of occupants of residential apartments or
227 condominiums through a single or master meter, including service for common
228 areas and facilities and vacant units, under a nonresidential utility service rate
229 classification may, between the first day of the first month and the fifteenth day
230 of the fourth month following the year of purchase, apply for credit or refund to
231 the director of revenue and the director shall give credit or make refund for taxes

232 paid on the domestic use portion of the purchase. The person making such
233 purchases on behalf of occupants of residential apartments or condominiums shall
234 have standing to apply to the director of revenue for such credit or refund;

235 (24) All sales of handicraft items made by the seller or the seller's spouse
236 if the seller or the seller's spouse is at least sixty-five years of age, and if the total
237 gross proceeds from such sales do not constitute a majority of the annual gross
238 income of the seller;

239 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041,
240 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United
241 States Code. The director of revenue shall promulgate rules pursuant to chapter
242 536 to eliminate all state and local sales taxes on such excise taxes;

243 (26) Sales of fuel consumed or used in the operation of ships, barges, or
244 waterborne vessels which are used primarily in or for the transportation of
245 property or cargo, or the conveyance of persons for hire, on navigable rivers
246 bordering on or located in part in this state, if such fuel is delivered by the seller
247 to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such
248 river;

249 (27) All sales made to an interstate compact agency created pursuant to
250 sections 70.370 to 70.441 or sections 238.010 to 238.100 in the exercise of the
251 functions and activities of such agency as provided pursuant to the compact;

252 (28) Computers, computer software and computer security systems
253 purchased for use by architectural or engineering firms headquartered in this
254 state. For the purposes of this subdivision, "headquartered in this state" means
255 the office for the administrative management of at least four integrated facilities
256 operated by the taxpayer is located in the state of Missouri;

257 (29) All livestock sales when either the seller is engaged in the growing,
258 producing or feeding of such livestock, or the seller is engaged in the business of
259 buying and selling, bartering or leasing of such livestock;

260 (30) All sales of barges which are to be used primarily in the
261 transportation of property or cargo on interstate waterways;

262 (31) Electrical energy or gas, whether natural, artificial or propane, water,
263 or other utilities which are ultimately consumed in connection with the
264 manufacturing of cellular glass products or in any material recovery processing
265 plant as defined in subdivision (4) of this subsection;

266 (32) Notwithstanding other provisions of law to the contrary, all sales of
267 pesticides or herbicides used in the production of crops, aquaculture, livestock or

268 poultry;

269 (33) Tangible personal property and utilities purchased for use or
270 consumption directly or exclusively in the research and development of
271 agricultural/biotechnology and plant genomics products and prescription
272 pharmaceuticals consumed by humans or animals;

273 (34) All sales of grain bins for storage of grain for resale;

274 (35) All sales of feed which are developed for and used in the feeding of
275 pets owned by a commercial breeder when such sales are made to a commercial
276 breeder, as defined in section 273.325, and licensed pursuant to sections 273.325
277 to 273.357;

278 (36) All purchases by a contractor on behalf of an entity located in another
279 state, provided that the entity is authorized to issue a certificate of exemption for
280 purchases to a contractor under the provisions of that state's laws. For purposes
281 of this subdivision, the term "certificate of exemption" shall mean any document
282 evidencing that the entity is exempt from sales and use taxes on purchases
283 pursuant to the laws of the state in which the entity is located. Any contractor
284 making purchases on behalf of such entity shall maintain a copy of the entity's
285 exemption certificate as evidence of the exemption. If the exemption certificate
286 issued by the exempt entity to the contractor is later determined by the director
287 of revenue to be invalid for any reason and the contractor has accepted the
288 certificate in good faith, neither the contractor or the exempt entity shall be liable
289 for the payment of any taxes, interest and penalty due as the result of use of the
290 invalid exemption certificate. Materials shall be exempt from all state and local
291 sales and use taxes when purchased by a contractor for the purpose of fabricating
292 tangible personal property which is used in fulfilling a contract for the purpose
293 of constructing, repairing or remodeling facilities for the following:

294 (a) An exempt entity located in this state, if the entity is one of those
295 entities able to issue project exemption certificates in accordance with the
296 provisions of section 144.062; or

297 (b) An exempt entity located outside the state if the exempt entity is
298 authorized to issue an exemption certificate to contractors in accordance with the
299 provisions of that state's law and the applicable provisions of this section;

300 (37) All sales or other transfers of tangible personal property to a lessor
301 who leases the property under a lease of one year or longer executed or in effect
302 at the time of the sale or other transfer to an interstate compact agency created
303 pursuant to sections 70.370 to 70.441 or sections 238.010 to 238.100;

304 (38) Sales of tickets to any collegiate athletic championship event that is
305 held in a facility owned or operated by a governmental authority or commission,
306 a quasi-governmental agency, a state university or college or by the state or any
307 political subdivision thereof, including a municipality, and that is played on a
308 neutral site and may reasonably be played at a site located outside the state of
309 Missouri. For purposes of this subdivision, "neutral site" means any site that is
310 not located on the campus of a conference member institution participating in the
311 event;

312 (39) All purchases by a sports complex authority created under section
313 64.920, and all sales of utilities by such authority at the authority's cost that are
314 consumed in connection with the operation of a sports complex leased to a
315 professional sports team;

316 (40) Beginning January 1, 2009, but not after January 1, 2015, materials,
317 replacement parts, and equipment purchased for use directly upon, and for the
318 modification, replacement, repair, and maintenance of aircraft, aircraft power
319 plants, and aircraft accessories;

320 (41) Sales of sporting clays, wobble, skeet, and trap targets to any
321 shooting range or similar places of business for use in the normal course of
322 business and money received by a shooting range or similar places of business
323 from patrons and held by a shooting range or similar place of business for
324 redistribution to patrons at the conclusion of a shooting event.

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

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

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

19 (2) The person has been finally adjudicated and found guilty, or entered
20 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
21 any state or of the United States, for any offense reasonably related to the
22 qualifications, functions or duties of any profession licensed or regulated under
23 this chapter, for any offense an essential element of which is fraud, dishonesty
24 or an act of violence, or for any offense involving moral turpitude, whether or not
25 sentence is imposed;

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

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

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

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

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

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

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

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

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

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

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

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

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

62 (16) The intentional act of substituting or otherwise changing the content,
63 formula or brand of any drug prescribed by written or oral prescription without
64 prior written or oral approval from the prescriber for the respective change in
65 each prescription; provided, however, that nothing contained herein shall prohibit
66 a pharmacist from substituting or changing the brand of any drug as provided
67 under section 338.056, and any such substituting or changing of the brand of any
68 drug as provided for in section 338.056 shall not be deemed unprofessional or
69 dishonorable conduct unless a violation of section 338.056 occurs;

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

73 3. After the filing of such complaint, the proceedings shall be conducted
74 in accordance with the provisions of chapter 621. Upon a finding by the
75 administrative hearing commission that the grounds, provided in subsection 2 of
76 **this section**, for disciplinary action are met, the board may, singly or in
77 combination, censure or place the person named in the complaint on probation on
78 such terms and conditions as the board deems appropriate for a period not to
79 exceed five years, or may suspend, for a period not to exceed three years, or
80 revoke the license, certificate, or permit. The board may impose additional
81 discipline on a licensee, registrant, or permittee found to have violated any
82 disciplinary terms previously imposed under this section or by agreement. The
83 additional discipline may include, singly or in combination, censure, placing the
84 licensee, registrant, or permittee named in the complaint on additional probation
85 on such terms and conditions as the board deems appropriate, which additional
86 probation shall not exceed five years, or suspension for a period not to exceed
87 three years, or revocation of the license, certificate, or permit.

88 4. If the board concludes that a licensee or registrant has committed an
89 act or is engaging in a course of conduct which would be grounds for disciplinary
90 action which constitutes a clear and present danger to the public health and
91 safety, the board may file a complaint before the administrative hearing
92 commission requesting an expedited hearing and specifying the activities which
93 give rise to the danger and the nature of the proposed restriction or suspension
94 of the licensee's or registrant's license. Within fifteen days after service of the
95 complaint on the licensee or registrant, the administrative hearing commission
96 shall conduct a preliminary hearing to determine whether the alleged activities
97 of the licensee or registrant appear to constitute a clear and present danger to the
98 public health and safety which justify that the licensee's or registrant's license
99 or registration be immediately restricted or suspended. The burden of proving
100 that the actions of a licensee or registrant constitute a clear and present danger
101 to the public health and safety shall be upon the state board of pharmacy. The
102 administrative hearing commission shall issue its decision immediately after the
103 hearing and shall either grant to the board the authority to suspend or restrict
104 the license or dismiss the action.

105 5. If the administrative hearing commission grants temporary authority
106 to the board to restrict or suspend the licensee's or registrant's license, such
107 temporary authority of the board shall become final authority if there is no
108 request by the licensee or registrant for a full hearing within thirty days of the
109 preliminary hearing. The administrative hearing commission shall, if requested
110 by the licensee or registrant named in the complaint, set a date to hold a full
111 hearing under the provisions of chapter 621 regarding the activities alleged in the
112 initial complaint filed by the board.

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

 338.330. As used in sections 338.300 to 338.370, the following terms
2 mean:

3 (1) **"Legend drug", any drug or biological product;**

4 **(a) Subject to section 503(b) of the Federal Food, Drug and**
5 **Cosmetic Act, including finished dosage forms and active ingredients**
6 **subject to section 503(b); or**

7 **(b) Required under federal law to be labeled with one of the**
8 **following statements prior to being dispensed or delivered:**

9 a. **"Caution: Federal law prohibits dispensing without**
10 **prescription";**

11 b. **"Caution: Federal law restricts this drug to use by or on the**
12 **order of a licensed veterinarian";**

13 c. **"Rx Only"; or**

14 **(c) Required by an applicable federal or state law or regulation**
15 **to be dispensed by prescription only or that is restricted to use by**
16 **practitioners only; and**

17 **(d) The term "drug", "prescription drug", or "legend drug" shall**
18 **not include:**

19 a. **An investigational new drug, as defined by 21 CFR 312.3(b),**
20 **that is being utilized for the purposes of conducting a clinical**
21 **investigation of that drug or product that is governed by, and being**
22 **conducted pursuant to, 21 CFR 312, et. seq.;**

23 b. **Any drug product being utilized for the purposes of**
24 **conducting a clinical investigation that is governed by, and being**
25 **conducted pursuant to, 21 CFR 312, et. seq.; or**

26 c. **Any drug product being utilized for the purposes of**
27 **conducting a clinical investigation that is governed or approved by an**
28 **institutional review board subject to 21 CFR Part 56 or 45 CFR Part 46;**

29 **(2) "Out-of-state wholesale drug distributor", a wholesale drug distributor**
30 **with no physical facilities located in the state;**

31 **[(2)] (3) "Pharmacy distributor", any licensed pharmacy, as defined in**
32 **section 338.210, engaged in the delivery or distribution of legend drugs to any**
33 **other licensed pharmacy where such delivery or distribution constitutes at least**
34 **five percent of the total gross sales of such pharmacy;**

35 **[(3)] (4) "Wholesale drug distributor", anyone engaged in the delivery or**
36 **distribution of legend drugs from any location and who is involved in the actual,**
37 **constructive or attempted transfer of a drug or drug-related device in this state,**
38 **other than to the ultimate consumer. This shall include, but not be limited to,**
39 **drug wholesalers, repackagers and manufacturers which are engaged in the**
40 **delivery or distribution of drugs in this state, with facilities located in this state**
41 **or in any other state or jurisdiction. A wholesale drug distributor shall not**
42 **include any common carrier or individual hired solely to transport legend**
43 **drugs. Any locations where drugs are delivered on a consignment basis, as**
44 **defined by the board, shall be exempt from licensure as a drug distributor, and**

45 those standards of practice required of a drug distributor but shall be open for
46 inspection by board of pharmacy representatives as provided for in section
47 338.360.

Section B. Because immediate action is necessary to ensure the
2 continuance of clinical trials in this state, the repeal and reenactment of section
3 338.330 of section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and the
6 repeal and reenactment of section 338.330 of section A of this act shall be in full
7 force and effect upon its passage and approval.

✓

Bill

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