

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 284
96TH GENERAL ASSEMBLY

1412L.04C

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 144.030, 338.055, and 338.330, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 144.030, 338.055, and 338.330, to read as follows:

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

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

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.824; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into

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.

18 foodstuffs which are to be sold ultimately in processed form at retail; or seed, limestone or
19 fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will
20 be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at
21 retail; economic poisons registered pursuant to the provisions of the Missouri pesticide
22 registration law (sections 281.220 to 281.310) which are to be used in connection with the
23 growth or production of crops, fruit trees or orchards applied before, during, or after planting,
24 the crop of which when harvested will be sold at retail or will be converted into foodstuffs which
25 are to be sold ultimately in processed form at retail;

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

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

38 (4) Replacement machinery, equipment, and parts and the materials and supplies solely
39 required for the installation or construction of such replacement machinery, equipment, and
40 parts, used directly in manufacturing, mining, fabricating or producing a product which is
41 intended to be sold ultimately for final use or consumption; and machinery and equipment, and
42 the materials and supplies required solely for the operation, installation or construction of such
43 machinery and equipment, purchased and used to establish new, or to replace or expand existing,
44 material recovery processing plants in this state. For the purposes of this subdivision, a "material
45 recovery processing plant" means a facility that has as its primary purpose the recovery of
46 materials into a useable product or a different form which is used in producing a new product and
47 shall include a facility or equipment which are used exclusively for the collection of recovered
48 materials for delivery to a material recovery processing plant but shall not include motor vehicles
49 used on highways. For purposes of this section, the terms motor vehicle and highway shall have
50 the same meaning pursuant to section 301.010. Material recovery is not the reuse of materials
51 within a manufacturing process or the use of a product previously recovered. The material
52 recovery processing plant shall qualify under the provisions of this section regardless of
53 ownership of the material being recovered;

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

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

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

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

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

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

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

74 (12) Electrical energy used in the actual primary manufacture, processing, compounding,
75 mining or producing of a product, or electrical energy used in the actual secondary processing
76 or fabricating of the product, or a material recovery processing plant as defined in subdivision
77 (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical
78 energy so used exceeds ten percent of the total cost of production, either primary or secondary,
79 exclusive of the cost of electrical energy so used or if the raw materials used in such processing
80 contain at least twenty-five percent recovered materials as defined in section 260.200. There
81 shall be a rebuttable presumption that the raw materials used in the primary manufacture of
82 automobiles contain at least twenty-five percent recovered materials. For purposes of this
83 subdivision, "processing" means any mode of treatment, act or series of acts performed upon
84 materials to transform and reduce them to a different state or thing, including treatment necessary
85 to maintain or preserve such processing by the producer at the production facility;

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

88 (14) Machinery, equipment, appliances and devices purchased or leased and used solely
89 for the purpose of preventing, abating or monitoring air pollution, and materials and supplies

90 solely required for the installation, construction or reconstruction of such machinery, equipment,
91 appliances and devices;

92 (15) Machinery, equipment, appliances and devices purchased or leased and used solely
93 for the purpose of preventing, abating or monitoring water pollution, and materials and supplies
94 solely required for the installation, construction or reconstruction of such machinery, equipment,
95 appliances and devices;

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

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

103 (18) All sales of insulin, **diabetic accessories and supplies including, but not limited**
104 **to, blood sugar testing monitors and test strips, lancet devices, lancets, and blood sugar**
105 **control solutions**, and prosthetic or orthopedic devices as defined on January 1, 1980, by the
106 federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including
107 the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids
108 and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed
109 pharmacist only upon a lawful prescription of a practitioner licensed to administer those items,
110 including samples and materials used to manufacture samples which may be dispensed by a
111 practitioner authorized to dispense such samples and all sales **or rental** of medical oxygen, home
112 respiratory equipment and accessories, hospital beds and accessories and ambulatory aids, all
113 sales **or rental** of manual and powered wheelchairs, stairway lifts, Braille writers, electronic
114 Braille equipment and, if purchased **or rented** by or on behalf of a person with one or more
115 physical or mental disabilities to enable them to function more independently, all sales **or rental**
116 of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative
117 and augmentative communication devices, and items used solely to modify motor vehicles to
118 permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter
119 or nonprescription drugs [to individuals with disabilities] **as prescribed by a practitioner, or**
120 **any medical equipment, supplies, or devices that are provided to a person on or by the**
121 **order of a physician, or that are otherwise paid for by a third-party health insurer,**
122 **Medicare, or Medicaid;**

123 (19) All sales made by or to religious and charitable organizations and institutions in
124 their religious, charitable or educational functions and activities and all sales made by or to all

125 elementary and secondary schools operated at public expense in their educational functions and
126 activities;

127 (20) All sales of aircraft to common carriers for storage or for use in interstate commerce
128 and all sales made by or to not-for-profit civic, social, service or fraternal organizations,
129 including fraternal organizations which have been declared tax-exempt organizations pursuant
130 to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or
131 charitable functions and activities and all sales made to eleemosynary and penal institutions and
132 industries of the state, and all sales made to any private not-for-profit institution of higher
133 education not otherwise excluded pursuant to subdivision (19) of this subsection or any
134 institution of higher education supported by public funds, and all sales made to a state relief
135 agency in the exercise of relief functions and activities;

136 (21) All ticket sales made by benevolent, scientific and educational associations which
137 are formed to foster, encourage, and promote progress and improvement in the science of
138 agriculture and in the raising and breeding of animals, and by nonprofit summer theater
139 organizations if such organizations are exempt from federal tax pursuant to the provisions of the
140 Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any
141 fair conducted by a county agricultural and mechanical society organized and operated pursuant
142 to sections 262.290 to 262.530;

143 (22) All sales made to any private not-for-profit elementary or secondary school, all sales
144 of feed additives, medications or vaccines administered to livestock or poultry in the production
145 of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for
146 food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber,
147 all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying
148 agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as
149 defined in section 142.028, natural gas, propane, and electricity used by an eligible new
150 generation cooperative or an eligible new generation processing entity as defined in section
151 348.432, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and
152 trailers. As used in this subdivision, the term "feed additives" means tangible personal property
153 which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock
154 or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop
155 oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance
156 the effect of a pesticide and the foam used to mark the application of pesticides and herbicides
157 for the production of crops, livestock or poultry. As used in this subdivision, the term "farm
158 machinery and equipment" means new or used farm tractors and such other new or used farm
159 machinery and equipment and repair or replacement parts thereon, and supplies and lubricants
160 used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish,

161 poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field
162 drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which is:

163 (a) Used exclusively for agricultural purposes;

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

165 (c) Used directly in producing farm products to be sold ultimately in processed form or
166 otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold
167 ultimately in processed form at retail;

168 (23) Except as otherwise provided in section 144.032, all sales of metered water service,
169 electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil
170 for domestic use and in any city not within a county, all sales of metered or unmetered water
171 service for domestic use:

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

180 (b) Regulated utility sellers shall determine whether individual purchases are exempt or
181 nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file
182 with and approved by the Missouri public service commission. Sales and purchases made
183 pursuant to the rate classification "residential" and sales to and purchases made by or on behalf
184 of the occupants of residential apartments or condominiums through a single or master meter,
185 including service for common areas and facilities and vacant units, shall be considered as sales
186 made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales
187 tax upon the entire amount of purchases classified as nondomestic use. The seller's utility
188 service rate classification and the provision of service thereunder shall be conclusive as to
189 whether or not the utility must charge sales tax;

190 (c) Each person making domestic use purchases of services or property and who uses any
191 portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day
192 of the fourth month following the year of purchase, and without assessment, notice or demand,
193 file a return and pay sales tax on that portion of nondomestic purchases. Each person making
194 nondomestic purchases of services or property and who uses any portion of the services or
195 property so purchased for domestic use, and each person making domestic purchases on behalf
196 of occupants of residential apartments or condominiums through a single or master meter,

197 including service for common areas and facilities and vacant units, under a nonresidential utility
198 service rate classification may, between the first day of the first month and the fifteenth day of
199 the fourth month following the year of purchase, apply for credit or refund to the director of
200 revenue and the director shall give credit or make refund for taxes paid on the domestic use
201 portion of the purchase. The person making such purchases on behalf of occupants of residential
202 apartments or condominiums shall have standing to apply to the director of revenue for such
203 credit or refund;

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

207 (25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071,
208 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of
209 revenue shall promulgate rules pursuant to chapter 536 to eliminate all state and local sales taxes
210 on such excise taxes;

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

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

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

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

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

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

232 (32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or
233 herbicides used in the production of crops, aquaculture, livestock or poultry;

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

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

238 (35) All sales of feed which are developed for and used in the feeding of pets owned by
239 a commercial breeder when such sales are made to a commercial breeder, as defined in section
240 273.325, and licensed pursuant to sections 273.325 to 273.357;

241 (36) All purchases by a contractor on behalf of an entity located in another state,
242 provided that the entity is authorized to issue a certificate of exemption for purchases to a
243 contractor under the provisions of that state's laws. For purposes of this subdivision, the term
244 "certificate of exemption" shall mean any document evidencing that the entity is exempt from
245 sales and use taxes on purchases pursuant to the laws of the state in which the entity is located.
246 Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's
247 exemption certificate as evidence of the exemption. If the exemption certificate issued by the
248 exempt entity to the contractor is later determined by the director of revenue to be invalid for any
249 reason and the contractor has accepted the certificate in good faith, neither the contractor or the
250 exempt entity shall be liable for the payment of any taxes, interest and penalty due as the result
251 of use of the invalid exemption certificate. Materials shall be exempt from all state and local
252 sales and use taxes when purchased by a contractor for the purpose of fabricating tangible
253 personal property which is used in fulfilling a contract for the purpose of constructing, repairing
254 or remodeling facilities for the following:

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

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

260 (37) All sales or other transfers of tangible personal property to a lessor who leases the
261 property under a lease of one year or longer executed or in effect at the time of the sale or other
262 transfer to an interstate compact agency created pursuant to sections 70.370 to 70.441 or sections
263 238.010 to 238.100;

264 (38) Sales of tickets to any collegiate athletic championship event that is held in a facility
265 owned or operated by a governmental authority or commission, a quasi-governmental agency,
266 a state university or college or by the state or any political subdivision thereof, including a
267 municipality, and that is played on a neutral site and may reasonably be played at a site located

268 outside the state of Missouri. For purposes of this subdivision, "neutral site" means any site that
269 is not located on the campus of a conference member institution participating in the event;

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

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

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

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,**
4 **or any officer, owner, manager, or controlling shareholder of the applicant has committed**
5 **any act or practice in subsection 2 of this section.** The board shall notify the applicant in
6 writing of the reasons for the refusal and shall advise the applicant of his or her right to file a
7 complaint with 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 or oral prescription without prior written or oral approval
55 from the prescriber for the respective change in each prescription; provided, however, that
56 nothing contained herein shall prohibit a pharmacist from substituting or changing the brand of
57 any drug as provided under section 338.056, and any such substituting or changing of the brand
58 of any drug as provided for in section 338.056 shall not be deemed unprofessional or
59 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.

81 Within fifteen days after service of the complaint on the licensee or registrant, the administrative
82 hearing commission shall conduct a preliminary hearing to determine whether the alleged
83 activities of the licensee or registrant appear to constitute a clear and present danger to the public
84 health and safety which justify that the licensee's or registrant's license or registration be
85 immediately restricted or suspended. The burden of proving that the actions of a licensee or
86 registrant constitute a clear and present danger to the public health and safety shall be upon the
87 state board of pharmacy. The administrative hearing commission shall issue its decision
88 immediately after the hearing and shall either grant to the board the authority to suspend or
89 restrict the license or dismiss the action.

90 5. If the administrative hearing commission grants temporary authority to the board to
91 restrict or suspend the licensee's or registrant's license, such temporary authority of the board
92 shall become final authority if there is no request by the licensee or registrant for a full hearing
93 within thirty days of the preliminary hearing. The administrative hearing commission shall, if
94 requested by the licensee or registrant named in the complaint, set a date to hold a full hearing

95 under the provisions of chapter 621 regarding the activities alleged in the initial complaint filed
96 by the board.

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

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

- 2 (1) **"Legend drug", any drug or biological product;**
3 (a) **Subject to section 503(b) of the Federal Food, Drug and Cosmetic Act, including**
4 **finished dosage forms and active ingredients subject to section 503(b); or**
5 (b) **Required under federal law to be labeled with one of the following statements**
6 **prior to being dispensed or delivered:**
7 a. **"Caution: Federal law prohibits dispensing without prescription";**
8 b. **"Caution: Federal law restricts this drug to use by or on the order of a licensed**
9 **veterinarian";**
10 c. **"Rx Only"; or**
11 (c) **Required by an applicable federal or state law or regulation to be dispensed by**
12 **prescription only or that is restricted to use by practitioners only; and**
13 (d) **The term "drug", "prescription drug", or "legend drug" shall not include:**
14 a. **An investigational new drug, as defined by 21 CFR 312.3(b), that is being utilized**
15 **for the purposes of conducting a clinical investigation of that drug or product that is**
16 **governed by, and being conducted pursuant to, 21 CFR 312, et. seq.;**
17 b. **Any drug product being utilized for the purposes of conducting a clinical**
18 **investigation that is governed by, and being conducted pursuant to, 21 CFR 312, et. seq.;**
19 **or**
20 c. **Any drug product being utilized for the purposes of conducting a clinical**
21 **investigation that is governed or approved by an institutional review board subject to 21**
22 **CFR Part 56 or 45 CFR Part 46;**
23 (2) **"Out-of-state wholesale drug distributor", a wholesale drug distributor with no**
24 **physical facilities located in the state;**
25 [(2)] (3) **"Pharmacy distributor", any licensed pharmacy, as defined in section 338.210,**
26 **engaged in the delivery or distribution of legend drugs to any other licensed pharmacy where**
27 **such delivery or distribution constitutes at least five percent of the total gross sales of such**
28 **pharmacy;**
29 [(3)] (4) **"Wholesale drug distributor", anyone engaged in the delivery or distribution of**
30 **legend drugs from any location and who is involved in the actual, constructive or attempted**
31 **transfer of a drug or drug-related device in this state, other than to the ultimate consumer. This**

32 shall include, but not be limited to, drug wholesalers, repackagers and manufacturers which are
33 engaged in the delivery or distribution of drugs in this state, with facilities located in this state
34 or in any other state or jurisdiction. A wholesale drug distributor shall not include any common
35 carrier or individual hired solely to transport legend drugs. Any locations where drugs are
36 delivered on a consignment basis, as defined by the board, shall be exempt from licensure as a
37 drug distributor, and those standards of practice required of a drug distributor but shall be open
38 for inspection by board of pharmacy representatives as provided for in section 338.360.

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

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