

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 872
100TH GENERAL ASSEMBLY

1909H.02C

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Section A. Sections 195.060, 196.100, 221.111, 338.015, 338.055, and 338.056, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 195.060, 195.550, 196.100, 221.111, 338.015, 338.055, and 338.056, to read as follows: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 officer or employee engaged in the enforcement of this law. No prescription for a drug in

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 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 January 1, 2021, 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 non-patient-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 non-patient-specific prescription;

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

22 (9) Issued by a practitioner who has received a waiver or a renewal thereof for a
23 specified period determined by the department of health and senior services, not to exceed
24 one year, from the requirement to use electronic prescribing, pursuant to a process
25 established in regulation by the department, 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; or

33 (11) Requested by the patient to be a written prescription to take to the facility of
34 his or her choice.

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

40 3. An individual who violates this section commits a civil violation for which a fine
41 of two hundred fifty dollars per violation, not to exceed five thousand dollars per calendar
42 year, may be assessed. The department of health and senior services shall be responsible
43 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, **at their choosing**, shall have the right to **request and** receive a written
9 prescription from their prescriber to take to the facility of their choice **or to have an electronic**
10 **prescription transmitted to the 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.

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