

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 757

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SHOEMYER.

Read 1<sup>st</sup> time February 13, 2001, and 1000 copies ordered printed.

Read 2<sup>nd</sup> time February 14, 2001, and referred to the Committee on Professional Registration and Licensing, February 20, 2001.

Reported from the Committee on Professional Registration and Licensing, March 8, 2001, with recommendation that the bill Do Pass by Consent.

Perfected by Consent March 22, 2001.

TED WEDEL, Chief Clerk

1874L.01P

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### AN ACT

To repeal sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, RSMo 2000, relating to practice of pharmacy, and to enact in lieu thereof seven new sections relating to the same subject.

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

Section A. Sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, to read as follows:

338.030. An applicant for examination shall be twenty-one years of age and in addition shall furnish satisfactory evidence of [his] **the applicant's** good moral character and [a certificate of graduation from an accredited high school or its equivalent,] have had one year practical experience under the supervision of a licensed pharmacist within a licensed pharmacy, or other location approved by the board, and shall be a graduate of a school or college of pharmacy whose requirements for graduation are satisfactory to and approved by the board of pharmacy.

338.043. 1. Notwithstanding any provision of law to the contrary, the board of pharmacy may grant a temporary license to an applicant who meets such requirements as the board may prescribe by rule and regulation.

2. [The temporary license provided in subsection 1 of this section shall limit the right

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

5 of the licensee to practice only in locations approved by the board under the supervision of a  
6 pharmacist licensed to practice pharmacy in this state.

7 3.] The license shall be renewable at the discretion of and with the approval of the board  
8 of pharmacy. A temporary license fee shall accompany the original application for a temporary  
9 license and a similar amount shall be paid in the event the temporary license is renewed.

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. The board shall notify the applicant in writing of the reasons for  
4 the refusal and shall advise the applicant of his **or her** right to file a complaint with the  
5 administrative hearing commission as provided by chapter 621, RSMo.

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

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

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

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

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

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

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

30 (7) Impersonation of any person holding a certificate of registration or authority, permit  
31 or license or allowing any person to use his or her certificate of registration or authority, permit,

32 license or diploma from any school;

33 (8) Disciplinary action against the holder of a license or other right to practice any  
34 profession regulated by this chapter granted by another state, territory, federal agency or country  
35 upon grounds for which revocation or suspension is authorized in this state;

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

37 (10) Assisting or enabling any person to practice or offer to practice any profession  
38 licensed or regulated by this chapter who is not registered and currently eligible to practice  
39 **[under] pursuant to** this chapter;

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

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

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

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

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

49 (16) The intentional act of substituting or otherwise changing the content, formula or  
50 brand of any drug prescribed by written or oral prescription without prior written or oral approval  
51 from the prescriber for the respective change in each prescription; provided, however, that  
52 nothing contained herein shall prohibit a pharmacist from substituting or changing the brand of  
53 any drug as provided **[under] pursuant to** section 338.056, and any such substituting or changing  
54 of the brand of any drug as provided for in section 338.056 shall not be deemed unprofessional  
55 or dishonorable conduct unless a violation of section 338.056 occurs;

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

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

68 censure, placing the licensee, registrant or permittee named in the complaint on additional  
69 probation on such terms and conditions as the board deems appropriate, which additional  
70 probation shall not exceed five years, or suspension for a period not to exceed three years, or  
71 revocation of the license, certificate or permit.

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

85 5. If the administrative hearing commission grants temporary authority to the board to  
86 restrict or suspend the pharmacist's license, such temporary authority of the board shall become  
87 final authority if there is no request by the pharmacist for a full hearing within thirty days of the  
88 preliminary hearing. The administrative hearing commission shall, if requested by the  
89 pharmacist named in the complaint, set a date to hold a full hearing [under] **pursuant to** the  
90 provisions of chapter 621, RSMo, regarding the activities alleged in the initial complaint filed  
91 by the board.

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

338.210. 1. As used in sections 338.210 to 338.300 "pharmacy" shall mean [any  
2 pharmacy, drug, chemical store, or apothecary shop, conducted for the purpose of compounding,  
3 and dispensing or retailing of any drug, medicine, chemical or poison when used in the  
4 compounding of a physician's prescription.] **any location where the practice of pharmacy**  
5 **occurs or such activities are offered or provided by a pharmacist or another acting under**  
6 **the supervision and authority of a pharmacist, including every premises or other place**  
7 **where:**

8 (1) **The practice of pharmacy is offered or conducted;**

9 (2) **Drugs, chemicals, medicines, prescriptions or poisons are compounded,**

10 prepared, dispensed, or sold or offered for sale at retail;

11 (3) The symbol "Rx" or the words "pharmacist", "apothecary", "drugstore",  
12 "drugs" and other symbols, words or phrases of similar meaning or understanding are  
13 used in any form to advertise retail products or services;

14 (4) Patient records or other information is maintained for the purpose of engaging  
15 or offering to engage in the practice of pharmacy or to comply with any relevant laws  
16 regulating the acquisition, possession, handling, transfer, sale or destruction of drugs,  
17 chemicals, medicines, prescriptions or poisons.

18 2. All activity or conduct involving the practice of pharmacy as it relates to an  
19 identifiable prescription or drug order shall occur at the pharmacy location where such  
20 identifiable prescription or drug order is first presented by the patient or the patient's  
21 authorized agent for preparation and dispensing, unless otherwise expressly authorized by  
22 the board.

23 3. The requirements set forth in subsection 2 of this section shall not be construed  
24 to bar the complete transfer of an identifiable prescription or drug order pursuant to a  
25 verbal request by or the written consent of the patient or the patient's authorized agent.

26 4. The board is hereby authorized to enact rules waiving the requirements stated  
27 in subsection 2 of this section and establishing such terms and conditions as it deems  
28 necessary, whereby any activities related to the preparation, dispensing or recording of an  
29 identifiable prescription or drug order may be shared between separately licensed  
30 facilities.

31 5. If a violation of this chapter or other relevant law occurs in connection with or  
32 adjunct to the preparation or dispensing of a prescription or drug order, any permit holder  
33 or pharmacist in charge at any facility participating in the preparation, dispensing or  
34 distribution of a prescription or drug order may be deemed vicariously responsible for  
35 such violation.

338.220. 1. It shall be unlawful for any person, copartnership, association, corporation  
2 or any other business entity to open, establish, operate or maintain any pharmacy, as defined by  
3 statute without first obtaining a permit or license to do so from the Missouri board of pharmacy.  
4 The following classes of pharmacy permits or licenses are hereby established:

- 5 (1) Class A: Community/ambulatory;
- 6 (2) Class B: Hospital outpatient pharmacy;
- 7 (3) Class C: Long-term care;
- 8 (4) Class D: Home health care;
- 9 (5) Class E: Radio pharmaceutical;
- 10 (6) Class F: Renal dialysis;

- 11 (7) Class G: Medical gas;  
12 (8) Class H: Sterile product compounding;  
13 (9) Class I: Consultant services;  
14 **(10) Class J: Shared service.**

15 2. Application for such permit or license shall be made upon a form furnished to the  
16 applicant; shall contain a statement that it is made under oath or affirmation and that its  
17 representations are true and correct to the best knowledge and belief of the person signing same,  
18 subject to the penalties of making a false affidavit or declaration; and shall be accompanied by  
19 a permit or license fee. The permit or license issued shall be renewable upon payment of a  
20 renewal fee. Separate applications shall be made and separate permits or licenses required for  
21 each pharmacy opened, established, operated or maintained by the same owner.

22 3. All permits, licenses or renewal fees collected pursuant to the provisions of sections  
23 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of  
24 pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the  
25 provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general  
26 assembly.

338.285. The board is hereby authorized and empowered, when examination or  
2 inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or  
3 conducted according to such legal rules and regulations and the laws of Missouri with respect  
4 thereto, to cause a complaint to be filed before the administrative hearing commission pursuant  
5 to **section 338.055 and** chapter 621, RSMo, charging the holder of a permit to operate a  
6 pharmacy with conduct constituting grounds for suspension or revocation of his **or her** permit.

338.353. 1. The board of pharmacy is hereby authorized and empowered, when  
2 complaints, examinations or inspection of a wholesale drug distributor or pharmacy distributor  
3 disclose to the board that a wholesale drug distributorship or pharmacy distributorship is not  
4 being operated or conducted according to such legal rules and regulations and the laws of  
5 Missouri or any other state or the federal government with respect thereto, to cause a complaint  
6 to be filed before the administrative hearing commission pursuant to **section 338.055 and**  
7 chapter 621, RSMo, charging the holder of a license to operate a drug distributorship or  
8 pharmacy wholesale operation constituting grounds for probation, suspension or revocation of  
9 the distributor license.

10 2. If the board concludes that a wholesale drug distributor or pharmacy distributor has  
11 committed an act or is engaging in a course of conduct which constitutes a clear and present  
12 danger to the public health and safety in Missouri, the board may file a complaint before the  
13 administrative hearing commission requesting an expedited hearing and specifying the activities  
14 which give rise to the danger and the nature of the proposed restriction or suspension of the

15 wholesale drug distributor's or pharmacy distributor's license. Within fifteen days after service  
16 of the complaint on a wholesale drug distributor or pharmacy distributor, the administrative  
17 hearing commission shall conduct a preliminary hearing to determine whether the alleged  
18 activities of the wholesale drug distributor or pharmacy distributor appear to constitute a clear  
19 and present danger to the public health and safety which justify that the wholesale drug  
20 distributor's or pharmacy distributor's license be immediately restricted or suspended. The  
21 burden of proving that a wholesale drug distributor or pharmacy distributor is a clear and present  
22 danger to the public health and safety shall be upon the state board of pharmacy. The  
23 administrative hearing commission shall issue its decision immediately after the hearing and  
24 shall either grant to the board the authority to suspend or restrict the license or dismiss the action.

25         3. If the administrative hearing commission grants temporary authority to the board to  
26 restrict or suspend the wholesale drug distributor's or pharmacy distributor's license, such  
27 temporary authority of the board shall become final authority if there is no request by the  
28 wholesale drug distributor or pharmacy distributor for a full hearing within thirty days of the  
29 preliminary hearing. The administrative hearing commission shall, if requested by the wholesale  
30 drug distributor or pharmacy distributor named in the complaint, set a date to hold a full hearing  
31 **[under] pursuant to** the provisions of chapter 621, RSMo, regarding the activities alleged in the  
32 initial complaint filed by the board.

33         4. If the administrative hearing commission dismisses the action filed by the board  
34 pursuant to subsection 2 of this section, such dismissal shall not bar the board from initiating a  
35 subsequent action on the same grounds.