

SENATE SUBSTITUTE

FOR

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1898

AN ACT

To amend chapter 338, RSMo, by adding thereto eleven new sections relating to a tax on licensed retail pharmacies in this state, with an emergency clause and an expiration date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Chapter 338, RSMo, is amended by adding thereto
2 eleven new sections, to be known as sections 338.500, 338.505,
3 338.510, 338.515, 338.520, 338.525, 338.530, 338.535, 338.540,
4 338.545 and 338.550, to read as follows:

5 338.500. 1. In addition to all other fees and taxes
6 required or paid, a tax is hereby imposed upon licensed retail
7 pharmacies for the privilege of providing outpatient prescription
8 drugs in this state. The tax is imposed upon the Missouri gross
9 retail prescription receipts earned from filling outpatient
10 retail prescriptions.

11 2. For purposes of sections 338.500 to 338.550:

12 (1) "Gross retail prescription receipts" shall mean all
13 amounts received by a licensed pharmacy for its own account from
14 the sale of outpatient prescription drugs in the state of

1 Missouri but shall not include those sales shipped out of the
2 state of Missouri and shall include the receipts from cost
3 sharing, dispensing fees, and retail prescription drug sales;

4 (2) "Licensed pharmacy" shall have the same meaning as such
5 term is defined in section 338.210;

6 (3) "Retail" means a sale for use or consumption and not
7 for resale.

8 338.505. 1. Each licensed retail pharmacy's tax shall be
9 based on a formula set forth in rules promulgated by the
10 department of social services. No rule or portion of a rule
11 promulgated under the authority of this section shall become
12 effective unless it has been promulgated pursuant to chapter 536,
13 RSMo.

14 2. The director of the department of social services or the
15 director's designee, may prescribe the form and contents of any
16 forms or other documents required by sections 338.500 to 338.550.

17 3. Notwithstanding any other provision of law to the
18 contrary, appeals regarding the promulgation of rules pursuant to
19 this section shall be made to the circuit court of Cole County.
20 The circuit court shall hear the matter as the court of original
21 jurisdiction.

22 338.510. 1. Each licensed retail pharmacy shall keep such
23 records as may be necessary to determine gross retail
24 prescription receipts.

25 2. The director of revenue may prescribe the form and
26 contents of any forms or other documents required by this
27 section.

28 3. Each licensed retail pharmacy shall report the gross

1 retail prescription receipts to the department of revenue.

2 4. The department of revenue shall provide the department
3 of social services with the information that is necessary to
4 implement the provisions of sections 338.500 to 338.550.

5 5. The information obtained by the department of social
6 services from the department of revenue shall be confidential and
7 any employee of the department of social services who unlawfully
8 discloses any such information for any other purpose, except as
9 authorized by law, shall be subject to the penalties specified in
10 section 32.057, RSMo.

11 338.515. The tax imposed by sections 338.500 to 338.550
12 shall become effective upon promulgation of rules by the
13 department of social services, but no later than July 1, 2002, or
14 the effective date of sections 338.500 to 338.550, whichever is
15 later.

16 338.520. 1. The determination of the amount of tax due
17 shall be the gross retail prescription receipts reported by each
18 pharmacy to the department of revenue multiplied by the graduated
19 tax rate established by rule by the department of social
20 services. Such tax rate shall be a graduated rate that will
21 increase based on increasing Medicaid prescription volume and be
22 based on gross retail prescription receipts and shall not exceed
23 a rate of six percent per annum of gross retail prescription
24 receipts; provided, that such graduated rate shall not exceed
25 one-tenth of one percent per annum in the case of licensed
26 pharmacies of which eighty percent or more of such gross receipts
27 are attributable to prescription drugs that are delivered
28 directly to the patient via common carrier, by mail, or a courier

1 service.

2 2. The department of social services shall notify each
3 licensed retail pharmacy of the amount of tax due. Such amount
4 may be paid in increments over the balance of the assessment
5 period.

6 338.525. If a pharmacy's gross retail prescription receipts
7 are included in the revenue assessed by the federal reimbursement
8 allowance or the nursing facility reimbursement allowance, the
9 proportion of those taxes paid or the entire tax due shall be
10 allowed as a credit for the pharmacy tax due pursuant to section
11 338.500.

12 338.530. The director of the department of social services
13 may offset the tax owed by a pharmacy against any Missouri
14 Medicaid payment due such pharmacy, if the pharmacy requests such
15 an offset. The amounts to be offset shall result, so far as
16 practicable, in withholding from the pharmacy an amount
17 substantially equal to the assessment due from the pharmacy. The
18 office of administration and the state treasurer may make any
19 fund transfers necessary to execute the offset.

20 338.535. 1. The pharmacy tax owed or, if an offset has
21 been made, the balance after such offset, if any, shall be
22 remitted by the pharmacy to the department of social services.
23 The remittance shall be made payable to the director of the
24 department of revenue and shall be deposited in the state
25 treasury to the credit of the "Pharmacy Tax Fund" which is hereby
26 created to provide payments for services related to the Medicaid
27 pharmacy program. All investment earnings of the fund shall be
28 credited to the fund.

1 2. An offset authorized by section 338.530 or a payment to
2 the pharmacy tax fund shall be accepted as payment of the
3 obligation set forth in section 338.500.

4 3. The state treasurer shall maintain records showing the
5 amount of money in the pharmacy tax fund at any time and the
6 amount of investment earnings on such amount.

7 4. Notwithstanding the provisions of section 33.080, RSMo,
8 to the contrary, any unexpended balance in the pharmacy tax fund
9 at the end of the biennium shall not revert to the credit of the
10 general revenue fund.

11 338.540. 1. The department of social services shall notify
12 each pharmacy with a tax due of more than ninety days of the
13 amount of such balance. If any pharmacy fails to pay its
14 pharmacy tax within thirty days of such notice, the pharmacy tax
15 shall be delinquent.

16 2. If any tax imposed pursuant to sections 338.500 to
17 338.550 is unpaid and delinquent, the department of social
18 services may proceed to enforce the state's lien against the
19 property of the pharmacy and compel the payment of such
20 assessment in the circuit court having jurisdiction in the county
21 where the pharmacy is located. In addition, the department of
22 social services may cancel or refuse to issue, extend, or
23 reinstate a Medicaid provider agreement to any pharmacy that
24 fails to pay the tax imposed by section 338.500.

25 3. Failure to pay the tax imposed by section 339.500, RSMo,
26 shall be grounds for denial, suspension, or revocation of a
27 license granted pursuant to this chapter. The department of
28 social services may request the board of pharmacy to deny,

1 suspend, or revoke the license of any pharmacy that fails to pay
2 such tax.

3 338.545. 1. The Medicaid pharmacy dispensing fee shall be
4 adjusted to include a supplemental payment amount substantially
5 equal to but not more than the tax assessment due.

6 2. The amount of the supplemental payment shall be adjusted
7 once annually beginning July first or once annually after the
8 initial start date of the pharmacy tax, whichever is later.

9 3. If the pharmacy tax required by sections 338.500 to
10 338.550 is declared invalid, the pharmacy dispensing fee for the
11 Medicaid program shall be the same as the amount required on July
12 1, 2001.

13 338.550. 1. The pharmacy tax required by sections 338.500
14 to 338.550 shall be the subject of an annual health care cost
15 impact study commissioned by the department of insurance to be
16 completed prior to or on January 1, 2003 and each year the tax is
17 in effect. The report shall be submitted to the speaker of the
18 house, president pro-tem of the senate, and the governor. This
19 study shall employ an independent economist and an independent
20 actuary paid for by the state's department of social services.
21 The department shall seek the advice and input from the
22 department of social services, business health care purchasers,
23 as well as health care insurers in the selection of the economist
24 and actuary. This study shall assess the degree of health care
25 costs shifted to individual Missourians and individual and group
26 health plans resulting from this tax.

27 2. The provisions of sections 338.500 to 338.550 shall not
28 apply to pharmacies domiciled or headquartered outside this state

1 which are engaged in prescription drug sales that are delivered
2 directly to patients within this state via common carrier, mail
3 or a carrier service.

4 3. Sections 338.500 to 338.550 shall expire on June 30,
5 2003.

6 Section B. Because immediate action is necessary to ensure
7 provision of prescription drugs to low-income residents of this
8 state, section A of this act is deemed necessary for the
9 immediate preservation of the public health, welfare, peace, and
10 safety, and is hereby declared to be an emergency act within the
11 meaning of the constitution, and section A of this act shall be
12 in full force and effect upon its passage and approval, whichever
13 later occurs.