

(Reprint)  
As Amended by House Committee

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*[As Amended by Senate Committee of the Whole]*

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*As Amended by Senate Committee*

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Session of 2009

**SENATE BILL No. 248**

By Committee on Ways and Means

2-9

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14 AN ACT concerning controlled substances; creating a statewide elec-  
15 tronic logging system for sale of methamphetamine precursor; amend-  
16 ing K.S.A. 2008 Supp. 65-1643 and repealing the existing section; also  
17 repealing K.S.A. 2008 Supp. 65-1643b.  
18

19 *Be it enacted by the Legislature of the State of Kansas:*

20 New Section 1. As used in this act, unless the context otherwise  
21 requires:

22 (a) "Board" means the state board of pharmacy.

23 (b) "Methamphetamine precursor" means any compound, mixture or  
24 preparation containing pseudoephedrine, ephedrine or phenylpropano-  
25 lamine, or any of their salts or optical isomers, or salts of optical isomers,  
26 but does not include products that have been formulated in such a way  
27 as to effectively prevent the conversion of the active ingredient into meth-  
28 amphetamine, or its salts for precursors, and does not include animal feed  
29 products containing ephedrine or any naturally occurring or herbal  
30 ephedra or extract of ephedra.

31 (c) "Pharmacy" means premises, laboratory, area or other place, in-  
32 cluding in-state, ~~and out-of-state and internet~~ facilities **that are required**  
33 **to be registered under K.S.A. 65-1643 or 65-1657, and amendments**  
34 **thereto:** (1) Where drugs are offered for sale where the profession of  
35 pharmacy is practiced and where prescriptions are compounded and dis-  
36 pensed; or (2) which has displayed upon it or within it the words "phar-  
37 macist," "pharmaceutical chemist," "pharmacy," "apothecary," "drug-  
38 store," "druggist," "drugs," "drug sundries" or any of these words or  
39 combinations of these words or words of similar import either in English  
40 or any sign containing any of these words; or (3) where the characteristic  
41 symbols of pharmacy or the characteristic prescription sign "Rx" may be  
42 exhibited.

43 New Sec. 2. (a) The board shall establish and maintain a program for

1 a statewide electronic logging system for sale of methamphetamine  
2 precursors.

3 (b) Each pharmacy shall maintain an electronic methamphetamine  
4 precursor recording log documenting the sale of methamphetamine pre-  
5 cursors. The board shall promulgate rules and regulations specifying a  
6 standardized format for the log and the information that each pharmacy  
7 shall submit to the board, which shall include, but not be limited to:

- 8 (1) The name, ~~and~~ address ~~and signature~~ of the person purchasing,  
9 receiving or otherwise acquiring the methamphetamine precursor;
- 10 (2) the name of the product and quantity purchased;
- 11 (3) the date and time of the purchase; and
- 12 (4) the name, or initials, of the licensed pharmacist, registered phar-  
13 macy technician or pharmacy intern or clerk supervised by a licensed  
14 pharmacist who sold the product.

15 (c) ***Notwithstanding the requirements of this section, each phar-***  
16 ***macy shall maintain the purchaser's signature in accordance with***  
17 ***subsection (k) of K.S.A. 65-1643, and amendments thereto.***

18 ~~(d)~~ (d) Each pharmacy ***that is capable*** shall submit the information  
19 from the log ~~at the point of sale~~ in real time in accordance with trans-  
20 mission methods specified in rules and regulations promulgated by the  
21 board.

22 ~~(d)~~ ~~The board may issue a waiver to a pharmacy that is unable to~~  
23 ~~submit log information by electronic means.~~ (e) ***The board may grant***  
24 ***a waiver exempting a pharmacy from compliance with the require-***  
25 ***ments of this section upon showing of good cause by the pharmacy***  
26 ***that [it] is otherwise unable to submit log information by electronic***  
27 ***means for various reasons, including, but not limited to, mechanical***  
28 ***or electronic failure or financial, technological or any other undue***  
29 ***burden on the pharmacy, established by rules and regulations.*** Such  
30 waiver may permit the pharmacy to submit log information by paper form  
31 or other means, provided that all information required by rules and reg-  
32 ulations is submitted in this alternative format.

33 ~~(f)~~ (f) No pharmacy or pharmacy employee shall be liable to any  
34 person in a civil action for damages or other relief arising from a sale of  
35 a methamphetamine precursor that occurs at another pharmacy.

36 (g) ***The requirements of this section shall not apply where***  
37 ***there is a lawful prescription present for the methamphetamine***  
38 ***precursor sold.***

39 ~~New Sec. 3.—The board shall not impose any charge for the estab-~~  
40 ~~lishment or maintenance of the program for the recording of metham-~~  
41 ~~phetamine precursors on a pharmacy. The board shall not charge any fees~~  
42 ~~for the transmission of data to the program database or for the receipt of~~  
43 ~~information from the database.~~

1     ***New Sec. 3. (a) The cost of establishing and maintaining the***  
2 ***statewide electronic logging system shall be borne by the state,***  
3 ***other non-state units of government, private entities, or others.***  
4 ***Pharmacies shall not be required to bear the costs associated with***  
5 ***establishing and maintaining the electronic logging system, whether***  
6 ***statewide, regional, county-wide or otherwise as provided in this***  
7 ***section.***

8     ***(b) In the event that funding for a statewide program is not***  
9 ***available, the board may implement the program on a non-state-***  
10 ***wide basis, whether such program is funded regionally or county-***  
11 ***wide or otherwise. The board shall, by rules and regulations, pre-***  
12 ***scribe that such regional or non-statewide program comply with***  
13 ***requirements applicable to a statewide program, including that***  
14 ***such non-state governmental units or regional programs may not***  
15 ***utilize different vendors. Any requirements of this act shall only be***  
16 ***applicable to pharmacies within such units of government or***  
17 ***regions, if a regional program is established, and all other phar-***  
18 ***macies in the state shall be exempt from requirements for the elec-***  
19 ***tronic logging system required pursuant to this act.***

20     ***(c) If the state, other non-state units of government, private en-***  
21 ***tities or others are unable to bear the costs of establishing and main-***  
22 ***taining the electronic logging system, pharmacies within the state,***  
23 ***or in the case of regional or other non-statewide programs, phar-***  
24 ***macies within those program areas shall be relieved of any obliga-***  
25 ***tion to comply with the statewide electronic logging system program***  
26 ***pursuant to this act. Such pharmacies shall still be subject to the***  
27 ***requirements of maintaining a log as provided in subsection (k) of***  
28 ***K.S.A. 65-1643, and amendments thereto.***

29     ***(d) The board shall not impose any charges for the establish-***  
30 ***ment or maintenance of the program for the recording of metham-***  
31 ***phetamine precursors on a pharmacy. The board shall not charge***  
32 ***any fees for the transmission of data to the program database or for***  
33 ***the receipt of information from the database.***

34     ***(e) The state board of pharmacy may receive and expend, or***  
35 ***supervise the expenditure of, any donation, gift, grant or bequest***  
36 ***made to the board for furthering any phase of the statewide elec-***  
37 ***tronic logging system program.***

38     ***New Sec. 4. (a) Methamphetamine precursor recording log infor-***  
39 ***mation submitted to the board shall be confidential and not a public***  
40 ***record and not subject to the Kansas open records act, K.S.A. 45-215 et***  
41 ***seq., and amendments thereto, except as provided in subsections (c) and***  
42 ***(d).***

43     ***(b) The board shall maintain procedures to ensure that the privacy***

1 and confidentiality of information collected, recorded, transmitted and  
2 maintained is not disclosed to persons except as provided in subsections  
3 (c) and (d).

4 (c) The board shall be authorized to provide data in the log to the  
5 following persons:

6 (1) Any person authorized to prescribe or dispense products contain-  
7 ing pseudoephedrine, ephedrine or phenylpropanolamine, for the pur-  
8 pose of ~~providing medical or pharmaceutical care for their patients to an~~  
9 **individual patient, complying with the provisions of this act; and**

10 (2) local, state and federal law enforcement or prosecutorial officials;  
11 ~~and.~~

12 ~~(3) local, state and federal officials who request access for the purpose~~  
13 ~~of facilitating a product recall necessary for the protection of public health~~  
14 ~~and safety.~~

15 (d) The board may provide data to public or private entities for sta-  
16 tistical, research or educational purposes after removing information that  
17 could be used to identify individual patients or persons who received  
18 methamphetamine precursors from pharmacies.

19 New Sec. 5. (a) The board is hereby authorized to contract with an-  
20 other agency of this state or with a private vendor, as necessary, to ensure  
21 the effective implementation and operation of the methamphetamine  
22 precursor recording log. ~~The log shall be capable of sending real time~~  
23 ~~notification to law enforcement officials.~~ ***The state agency or private***  
24 ***vendor selected shall have the technological capability to receive***  
25 ***electronic log data from pharmacies submitted pursuant to section***  
26 ***2, and amendments thereto, and to send real time notification to law***  
27 ***enforcement officials. Regardless of the entity selected to manage***  
28 ***the program, pharmacies are not required to use any one particular***  
29 ***vendor's product to comply with the requirements under section 2,***  
30 ***and amendments thereto. Any electronic system implemented by the***  
31 ***state shall be capable of bridging with existing and future opera-***  
32 ***tional systems used by pharmacies at no cost to such pharmacies.***

33 Any contractor shall be bound to comply with the provisions regarding  
34 confidentiality of log information in ~~section 5~~ ***this section***, and amend-  
35 ments thereto, and shall be subject to the penalties specified in section  
36 ~~10~~ ***7***, and amendments thereto, for unlawful acts.

37 (b) All information collected for the program database and any re-  
38 cords maintained by the board, or by any entity contracting with the  
39 board, submitted to, maintained or stored as a part of the database, shall  
40 be retained for five years. Such information and records shall then be  
41 destroyed unless a law enforcement entity has submitted a written request  
42 to the board for retention of specific information or records in accordance  
43 with procedures adopted by the board.

1 (c) The board shall develop and implement a program to educate  
2 pharmacies and pharmacy employees about the program for the record-  
3 ing of methamphetamine precursors.

4 (d) The board shall review the effectiveness of the program for the  
5 recording of methamphetamine precursors and submit an annual report  
6 to the senate standing committee on public health and welfare and the  
7 house standing committee on health and human services.

8 New Sec. 6. The board shall adopt, within ~~90 days~~ **a year six months**  
9 after the effective date of this act, such rules and regulations the board  
10 deems necessary to carry out the provisions of this act.

11 New Sec. 7. (a) A pharmacy that knowingly fails to submit meth-  
12 amphetamine precursor recording log information to the board as re-  
13 quired by this act or knowingly submits incorrect log information shall be  
14 guilty of a severity level 10, nonperson felony.

15 (b) A person authorized to have log information pursuant to this act  
16 who knowingly discloses such information in violation of this act shall be  
17 guilty of a severity level 10, nonperson felony.

18 (c) A person authorized to have log information pursuant to this act  
19 who knowingly uses such information in a manner or for a propose in  
20 violation of this act shall be guilty of a severity level 10, nonperson felony.

21 ***New Sec. 8. Sections 1 through 8, and amendments thereto,***  
22 ***shall be known and may be cited as the statewide electronic logging***  
23 ***system for sale of methamphetamine precursor act.***

24 Sec. ~~8~~ **9.** K.S.A. 2008 Supp. 65-1643 is hereby amended to read as  
25 follows: 65-1643. It shall be unlawful:

26 (a) For any person to operate, maintain, open or establish any phar-  
27 macy within this state without first having obtained a registration from  
28 the board. Each application for registration of a pharmacy shall indicate  
29 the person or persons desiring the registration, including the pharmacist  
30 in charge, as well as the location, including the street name and number,  
31 and such other information as may be required by the board to establish  
32 the identity and exact location of the pharmacy. The issuance of a regis-  
33 tration for any pharmacy shall also have the effect of permitting such  
34 pharmacy to operate as a retail dealer without requiring such pharmacy  
35 to obtain a retail dealer's permit. On evidence satisfactory to the board:  
36 (1) That the pharmacy for which the registration is sought will be con-  
37 ducted in full compliance with the law and the rules and regulations of  
38 the board; (2) that the location and appointments of the pharmacy are  
39 such that it can be operated and maintained without endangering the  
40 public health or safety; (3) that the pharmacy will be under the supervision  
41 of a pharmacist, a registration shall be issued to such persons as the board  
42 shall deem qualified to conduct such a pharmacy.

43 (b) For any person to manufacture within this state any drugs except

1 under the personal and immediate supervision of a pharmacist or such  
2 other person or persons as may be approved by the board after an inves-  
3 tigation and a determination by the board that such person or persons is  
4 qualified by scientific or technical training or experience to perform such  
5 duties of supervision as may be necessary to protect the public health and  
6 safety; and no person shall manufacture any such drugs without first ob-  
7 taining a registration so to do from the board. Such registration shall be  
8 subject to such rules and regulations with respect to requirements, sani-  
9 tation and equipment, as the board may from time to time adopt for the  
10 protection of public health and safety.

11 (c) For any person to distribute at wholesale any drugs without first  
12 obtaining a registration so to do from the board.

13 (d) For any person to sell or offer for sale at public auction or private  
14 sale in a place where public auctions are conducted, any drugs without  
15 first having obtained a registration from the board so to do, and it shall  
16 be necessary to obtain the permission of the board in every instance where  
17 any of the products covered by this section are to be sold or offered for  
18 sale.

19 (e) For any person to in any manner distribute or dispense samples  
20 of any drugs without first having obtained a permit from the board so to  
21 do, and it shall be necessary to obtain permission from the board in every  
22 instance where the samples are to be distributed or dispensed. Nothing  
23 in this subsection shall be held to regulate or in any manner interfere  
24 with the furnishing of samples of drugs to duly licensed practitioners, to  
25 mid-level practitioners, to pharmacists or to medical care facilities.

26 (f) Except as otherwise provided in this subsection (f), for any person  
27 operating a store or place of business to sell, offer for sale or distribute  
28 any drugs to the public without first having obtained a registration or  
29 permit from the board authorizing such person so to do. No retail dealer  
30 who sells 12 or fewer different nonprescription drug products shall be  
31 required to obtain a retail dealer's permit under the pharmacy act of the  
32 state of Kansas or to pay a retail dealer new permit or permit renewal fee  
33 under such act. It shall be lawful for a retail dealer who is the holder of  
34 a valid retail dealer's permit issued by the board or for a retail dealer who  
35 sells 12 or fewer different nonprescription drug products to sell and dis-  
36 tribute nonprescription drugs which are prepackaged, fully prepared by  
37 the manufacturer or distributor for use by the consumer and labeled in  
38 accordance with the requirements of the state and federal food, drug and  
39 cosmetic acts. Such nonprescription drugs shall not include: (1) A con-  
40 trolled substance; (2) a prescription-only drug; or (3) a drug product in-  
41 tended for human use by hypodermic injection; but such a retail dealer  
42 shall not be authorized to display any of the words listed in subsection  
43 ~~(tt)~~ (dd) of K.S.A. 65-1626 and amendments thereto, for the designation

1 of a pharmacy or drugstore.

2 (g) For any person to sell any drugs manufactured and sold only in  
3 the state of Kansas, unless the label and directions on such drugs shall  
4 first have been approved by the board.

5 (h) For any person to operate an institutional drug room without first  
6 having obtained a registration to do so from the board. Such registration  
7 shall be subject to the provisions of K.S.A. 65-1637a and amendments  
8 thereto and any rules and regulations adopted pursuant thereto.

9 (i) For any person to be a pharmacy student without first obtaining  
10 a registration to do so from the board, in accordance with rules and reg-  
11 ulations adopted by the board, and paying a pharmacy student registration  
12 fee of \$25 to the board.

13 (j) For any person to operate a veterinary medical teaching hospital  
14 pharmacy without first having obtained a registration to do so from the  
15 board. Such registration shall be subject to the provisions of K.S.A. 65-  
16 1662 and amendments thereto and any rules and regulations adopted  
17 pursuant thereto.

18 (k) For any person to sell or distribute in a pharmacy a controlled  
19 substance designated in subsection (e) or (f) of K.S.A. 65-4113, and  
20 amendments thereto, unless:

21 (1) (A) Such controlled substance is sold or distributed by a licensed  
22 pharmacist, a registered pharmacy technician or a pharmacy intern or  
23 clerk supervised by a licensed pharmacist;

24 (B) any person purchasing, receiving or otherwise acquiring any such  
25 controlled substance produces a photo identification showing the date of  
26 birth of the person and signs a log and enters in the log, or allows the  
27 seller to enter in the log, such person's address and the date and time of  
28 sale *or allows the seller to enter such information into an electronic logging*  
29 *system pursuant to section 3 2*. The log or database required by the board  
30 shall be available for inspection during regular business hours to the board  
31 of pharmacy and any law enforcement officer;

32 (C) the seller determines that the name entered in the log corre-  
33 sponds to the name provided on such identification and that the date and  
34 time entered are correct; and

35 (D) the seller enters in the log the name of the controlled substance  
36 and the quantity sold; or

37 (2) there is a lawful prescription.

38 (l) For any pharmacy to allow customers to have direct access to any  
39 controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113,  
40 and amendments thereto. Such controlled substance shall be placed be-  
41 hind the counter or stored in a locked cabinet that is located in an area  
42 of the pharmacy to which customers do not have direct access.

43 (m) A seller who in good faith releases information in a log pursuant

1 to subsection (k) to any law enforcement officer is immune from civil  
2 liability for such release unless the release constitutes gross negligence  
3 or intentional, wanton or willful misconduct.

4 *(n) For any person to sell or lease or offer for sale or lease durable*  
5 *medical equipment without first obtaining a registration from the board,*  
6 *in accordance with rules and regulations adopted by the board, except*  
7 *that this subsection shall not apply to:*

8 *(1) Sales not made in the regular course of the person's business; or*  
9 *(2) sales by charitable organizations exempt from federal income tax-*  
10 *ation pursuant to the internal revenue code of 1986, as amended.*

11 Sec. ~~9~~ **10.** K.S.A. 2008 Supp. 65-1643 and 65-1643b are hereby  
12 repealed.

13 Sec. ~~10~~ **11.** This act shall take effect and be in force from and after  
14 its publication in the statute book.