

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 248

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

SB 248, as amended, would enact new law to be cited as the Statewide Electronic Logging System for Sale of Methamphetamine Precursor Act and would amend existing law concerning the sale of methamphetamine precursors. The bill would define a "methamphetamine precursor" to be any compound, mixture or preparation containing pseudoephedrine, ephedrine or phenylpropanolamine. The sales of methamphetamine precursors which are prescribed would be excluded from the requirements of any logging system.

The bill would require the Board of Pharmacy to establish and maintain a statewide electronic logging system documenting the sale of methamphetamine precursors. The Board of Pharmacy would be required to promulgate rules and regulations that specify a standardized format for the electronic log and the information each pharmacy would be required to submit to the Board. The Board would be required to adopt the rules and regulations it considers necessary to carry out the provisions of the Act within six months of the effective date of the Act. Information required to be submitted would include:

- The name and address of the person purchasing, receiving or otherwise acquiring the methamphetamine precursor;
- The name of the product and quantity purchased;
- The date and time of the purchase; and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The name, or initials, of the licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist who sold the product.

Each pharmacy would be required to maintain the purchaser's signature as set out in current law (KSA 65-1643(k)) which requires that any person purchasing, receiving or otherwise acquiring a controlled substance must produce a photo identification that shows the date of birth of the person and the person must sign a log.

The bill would require each pharmacy that has the capability to submit the information from the electronic log in real time by transmission methods specified in rules and regulations. The Board would be allowed to issue a waiver exempting a pharmacy from compliance with the requirement to submit the methamphetamine precursor sales log electronically if the pharmacy can show good cause. The definition of "good cause" would include, but not be limited to, a mechanical or electronic failure or a financial, technological or other undue burden on the pharmacy. If granted a waiver, a pharmacy would be permitted to submit the required log information in paper form or by other means.

Additionally, the bill would include the following provisions:

- That no pharmacy, or pharmacy employee, be liable to any person in a civil action for damages or other relief arising from a sale of a methamphetamine precursor that occurs at another pharmacy;
- That the cost of establishing and maintaining the statewide electronic logging system would be borne by the state, other non-state units of government, private entities, or others;
- That the Board of Pharmacy would be authorized to receive and expend or supervise the expenditure of any

donation, gift, grant or bequest made to the Board for any phase of the statewide electronic logging system;

- That pharmacies would not be required to bear any costs associated with establishing and maintaining the electronic logging system or for transmitting data to the electronic logging system database or receiving information from the database;
- That, in the event that funding for a statewide program is not available, the Board of Pharmacy would be allowed to implement the program on a regional, county-wide or other basis. Any non-statewide programs would be required to comply with the requirements applicable to a statewide program and would not be allowed to utilize different vendors;
- That the Board of Pharmacy would be allowed to contract with another state agency or private vendor to ensure the effective implementation and operation of the electronic logging system. The state agency or vendor would be required to have the technological capability to receive electronic log data and to send, in real time, notification to law enforcement officials and to bridge with existing and future operational systems used by pharmacies; and
- That the Board of Pharmacy would be required to review the effectiveness of the program for recording the sale of methamphetamine precursors and submit an annual report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services.

Further, the electronic log information submitted to the Board would not be subject to the Kansas Open Records Act. The Board would be authorized to provide data in the electronic log to specified persons, including:

- Any person authorized to prescribe or dispense products containing pseudoephedrine, ephedrine, or phenylpropanolamine, for the purpose of complying with the provisions of this Act; and
- Local, state and federal law enforcement or prosecutorial officials.

The Board would be allowed to provide data to public or private entities for statistical, research or educational purposes after removing information that could be used to identify individual patients or persons.

Any pharmacy or person who knowingly violates provisions of the bill would be guilty of a severity level 10, nonperson felony. The Board of Pharmacy would be required to adopt rules and regulations necessary to carry out the provisions of the Act within one year of the effective date of the bill.

The bill also would amend existing law concerning the unlawful sale, lease or offer for sale or lease of durable medical equipment without first obtaining a registration from the Board of Pharmacy. This language is in KSA 65-1643b which would be repealed. (The amendment results from a section of law being amended twice during the 2007 Legislative Session.)

Background

The bill was introduced by the Senate Committee on Ways and Means. Proponents of the bill in the Senate Committee included the Executive Secretary of the Kansas State Board of Pharmacy, an Administrative Special Agent in Charge from the Kansas Bureau of Investigation, a Crawford County Sheriff representing the Kansas Sheriff's Association and the Southeast Kansas Drug Enforcement Task Force, a representative from Methshield, a representative of the Kansas Independent Pharmacy Service Corporation, and a private citizen. Written testimony in support of the bill was provided by

a representative of the Kansas Association of Police Chiefs and the Kansas Peace Officers Association.

Proponents noted that currently, under federal and state law, each pharmacy must keep a bound hard copy or an electronic methamphetamine precursor logbook and that a problem with the hard bound copy is that it is labor intensive for both the pharmacy and law enforcement. Also, under the current state law that requires a hard bound logbook, individuals can purchase pseudoephedrine in excess of the 3.6 gram per day or nine grams per month limit by shopping pharmacy-to-pharmacy.

Opponents of the bill in the Senate Committee included a representative of Medco Health Solutions Inc., a representative from the Kansas Pharmacy Coalition and a representative of Express Scripts.

Opponents noted that while they supported the general concept of the bill, they had concerns that the electronic logbook would be repetitive and expensive for pharmacy benefit managers who only dispense with a prescription and by mail and who would have no way to track an electronic signature from a consumer. Other concerns included the real time requirement of the bill, the potential costs to the pharmacy, who would have access to the reported information, and the possibility that pharmacists would have to stop sales to customers, including some who might be violent.

Amendments made by the Senate Public Health and Welfare Committee reflect the compromise reached by the proponents and opponents of the bill.

A technical amendment to the bill was made by the Senate Committee of the Whole.

Proponents of the bill who testified in the House Committee on Corrections and Juvenile Justice were Senator Vicki Schmidt; Sheriff Sandy Horton, Crawford County; Doug Mays, Methshield; Steve Willholf, Kansas Attorney General's

Office and the Kansas Bureau of Investigation; Debie Billingsley, Kansas Board of Pharmacy; Ron Gaches, Kansas Independent Pharmacy Service Corp.' Ed Klumpp, Kansas Association of Chiefs of Police and the Kansas Peace Officers Association; and Ron Hein, Kansas Pharmacy Coalition.

There were no opponents of the bill who testified in the House Committee on Corrections and Juvenile Justice.

The House Committee amended the bill to:

- Require the Board to adopt rules and regulations within six months of the effective date of the Act;
- Authorize the Board to disclose data in the electronic log to any person authorized to prescribe or dispense products containing pseudo-ephedrine, ephedrine, or phenylpropanolamine, for the purpose of complying with the provisions of this Act; and
- Strike the provision regarding local, state, and federal officials who request access for the purpose of facilitating a product recall necessary for the protection of public health and safety.

The original fiscal note prepared by the Division of the Budget stated that the Board of Pharmacy indicated the bill would have no fiscal effect on the agency. The revised fiscal note states that the bill would increase expenditures from the Board of Pharmacy's fee fund by approximately \$350,000 in FY 2010 to implement the electronic logging system and approximately \$350,000 in each subsequent year to maintain the system. The fiscal effect associated with SB 248 is not included in *The FY 2010 Governor's Budget Report*.