

Substitute for SENATE BILL No. 327

By Committee on Public Health and Welfare

3-14

1 AN ACT concerning prescription of drugs; relating to electronic
2 prescription and the prescription monitoring program; amending K.S.A.
3 65-4123 and K.S.A. 2011 Supp. 65-1626, 65-1637, 65-1683, 65-1685,
4 65-1693 and 65-4101 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2011 Supp. 65-1626 is hereby amended to read as
8 follows: 65-1626. For the purposes of this act:

9 (a) "Administer" means the direct application of a drug, whether by
10 injection, inhalation, ingestion or any other means, to the body of a patient
11 or research subject by:

- 12 (1) A practitioner or pursuant to the lawful direction of a practitioner;
13 (2) the patient or research subject at the direction and in the presence
14 of the practitioner; or
15 (3) a pharmacist as authorized in K.S.A. 65-1635a, and amendments
16 thereto.

17 (b) "Agent" means an authorized person who acts on behalf of or at
18 the direction of a manufacturer, distributor or dispenser but shall not
19 include a common carrier, public warehouseman or employee of the carrier
20 or warehouseman when acting in the usual and lawful course of the
21 carrier's or warehouseman's business.

22 (c) *"Application service provider" means an entity that sells*
23 *electronic prescription or pharmacy prescription applications as a hosted*
24 *service where the entity controls access to the application and maintains*
25 *the software and records on its server.*

26 (d) "Authorized distributor of record" means a wholesale distributor
27 with whom a manufacturer has established an ongoing relationship to
28 distribute the manufacturer's prescription drug. An ongoing relationship is
29 deemed to exist between such wholesale distributor and a manufacturer
30 when the wholesale distributor, including any affiliated group of the
31 wholesale distributor, as defined in section 1504 of the internal revenue
32 code, complies with any one of the following: (1) The wholesale
33 distributor has a written agreement currently in effect with the
34 manufacturer evidencing such ongoing relationship; and (2) the wholesale
35 distributor is listed on the manufacturer's current list of authorized
36 distributors of record, which is updated by the manufacturer on no less

1 than a monthly basis.

2 ~~(d)~~(e) "Board" means the state board of pharmacy created by K.S.A.
3 74-1603, and amendments thereto.

4 ~~(e)~~(f) "Brand exchange" means the dispensing of a different drug
5 product of the same dosage form and strength and of the same generic
6 name as the brand name drug product prescribed.

7 ~~(f)~~(g) "Brand name" means the registered trademark name given to a
8 drug product by its manufacturer, labeler or distributor.

9 ~~(g)~~(h) "Chain pharmacy warehouse" means a permanent physical
10 location for drugs or devices, or both, that acts as a central warehouse and
11 performs intracompany sales or transfers of prescription drugs or devices
12 to chain pharmacies that have the same ownership or control. Chain
13 pharmacy warehouses must be registered as wholesale distributors.

14 ~~(h)~~(i) "Co-licensee" means a pharmaceutical manufacturer that has
15 entered into an agreement with another pharmaceutical manufacturer to
16 engage in a business activity or occupation related to the manufacture or
17 distribution of a prescription drug and the national drug code on the drug
18 product label shall be used to determine the identity of the drug
19 manufacturer.

20 (j) *"DEA" means the U.S. department of justice, drug enforcement*
21 *administration.*

22 ~~(i)~~(k) "Deliver" or "delivery" means the actual, constructive or
23 attempted transfer from one person to another of any drug whether or not
24 an agency relationship exists.

25 ~~(j)~~(l) "Direct supervision" means the process by which the
26 responsible pharmacist shall observe and direct the activities of a
27 pharmacy student or pharmacy technician to a sufficient degree to assure
28 that all such activities are performed accurately, safely and without risk or
29 harm to patients, and complete the final check before dispensing.

30 ~~(k)~~(m) "Dispense" means to deliver prescription medication to the
31 ultimate user or research subject by or pursuant to the lawful order of a
32 practitioner or pursuant to the prescription of a mid-level practitioner.

33 ~~(l)~~(n) "Dispenser" means a practitioner or pharmacist who dispenses
34 prescription medication.

35 ~~(m)~~(o) "Distribute" means to deliver, other than by administering or
36 dispensing, any drug.

37 ~~(n)~~(p) "Distributor" means a person who distributes a drug.

38 ~~(o)~~(q) "Drop shipment" means the sale, by a manufacturer, that
39 manufacturer's co-licensee, that manufacturer's third party logistics
40 provider, or that manufacturer's exclusive distributor, of the manufacturer's
41 prescription drug, to a wholesale distributor whereby the wholesale
42 distributor takes title but not possession of such prescription drug and the
43 wholesale distributor invoices the pharmacy, the chain pharmacy

1 warehouse, or other designated person authorized by law to dispense or
2 administer such prescription drug, and the pharmacy, the chain pharmacy
3 warehouse, or other designated person authorized by law to dispense or
4 administer such prescription drug receives delivery of the prescription
5 drug directly from the manufacturer, that manufacturer's co-licensee, that
6 manufacturer's third party logistics provider, or that manufacturer's
7 exclusive distributor, of such prescription drug. Drop shipment shall be
8 part of the "normal distribution channel."

9 ~~(p)~~(r) "Drug" means: (1) Articles recognized in the official United
10 States pharmacopoeia, or other such official compendiums of the United
11 States, or official national formulary, or any supplement of any of them;
12 (2) articles intended for use in the diagnosis, cure, mitigation, treatment or
13 prevention of disease in man or other animals; (3) articles, other than food,
14 intended to affect the structure or any function of the body of man or other
15 animals; and (4) articles intended for use as a component of any articles
16 specified in clause (1), (2) or (3) of this subsection; but does not include
17 devices or their components, parts or accessories, except that the term
18 "drug" shall not include amygdalin (laetrile) or any livestock remedy, if
19 such livestock remedy had been registered in accordance with the
20 provisions of article 5 of chapter 47 of the Kansas Statutes Annotated,
21 prior to its repeal.

22 ~~(q)~~(s) "Durable medical equipment" means technologically
23 sophisticated medical devices that may be used in a residence, including
24 the following: (1) Oxygen and oxygen delivery system; (2) ventilators; (3)
25 respiratory disease management devices; (4) continuous positive airway
26 pressure (CPAP) devices; (5) electronic and computerized wheelchairs and
27 seating systems; (6) apnea monitors; (7) transcutaneous electrical nerve
28 stimulator (TENS) units; (8) low air loss cutaneous pressure management
29 devices; (9) sequential compression devices; (10) feeding pumps; (11)
30 home phototherapy devices; (12) infusion delivery devices; (13)
31 distribution of medical gases to end users for human consumption; (14)
32 hospital beds; (15) nebulizers; or (16) other similar equipment determined
33 by the board in rules and regulations adopted by the board.

34 (t) *"Electronic prescription" means an electronically prepared*
35 *prescription that is authorized and transmitted from the prescriber to the*
36 *pharmacy by means of electronic transmission.*

37 (u) *"Electronic prescription application" means software that is used*
38 *to create electronic prescriptions and that is intended to be installed on the*
39 *prescriber's computers and servers where access and records are*
40 *controlled by the prescriber.*

41 (v) *"Electronic signature" means a confidential personalized digital*
42 *key, code, number or other method for secure electronic data*
43 *transmissions which identified a particular person as the source of the*

1 message, authenticates the signatory of the message and indicates the
2 person's approval of the information contained in the transmission.

3 (w) "Electronic transmission" means the transmission of an
4 electronic prescription, formatted as an electronic data file, from a
5 prescriber's electronic prescription application to a pharmacy's computer;
6 where the data file is imported into the pharmacy prescription application.

7 (x) "Electronically prepared prescription" means a prescription that
8 is generated using an electronic prescription application.

9 (†)(y) "Exclusive distributor" means any entity that: (1) Contracts
10 with a manufacturer to provide or coordinate warehousing, wholesale
11 distribution or other services on behalf of a manufacturer and who takes
12 title to that manufacturer's prescription drug, but who does not have
13 general responsibility to direct the sale or disposition of the manufacturer's
14 prescription drug; (2) is registered as a wholesale distributor under the
15 pharmacy act of the state of Kansas; and (3) to be considered part of the
16 normal distribution channel, must be an authorized distributor of record.

17 ~~(s) "Electronic transmission" means transmission of information in~~
18 ~~electronic form or the transmission of the exact visual image of a~~
19 ~~document by way of electronic equipment.~~

20 (†)(z) "Facsimile transmission" or "fax transmission" means the
21 transmission of a digital image of a prescription from the prescriber or the
22 prescriber's agent to the pharmacy. "Facsimile transmission" includes but
23 is not limited to transmission of a written prescription between the
24 prescriber's fax machine and the pharmacy's fax machine; transmission of
25 an electronically prepared prescription from the prescriber's electronic
26 prescription application to the pharmacy's fax machine, computer or
27 printer; or transmission of an electronically prepared prescription from
28 the prescriber's fax machine to the pharmacy's fax machine, computer or
29 printer.

30 (aa) "Generic name" means the established chemical name or official
31 name of a drug or drug product.

32 (†)(bb) (1) "Institutional drug room" means any location where
33 prescription-only drugs are stored and from which prescription-only drugs
34 are administered or dispensed and which is maintained or operated for the
35 purpose of providing the drug needs of:

36 (A) Inmates of a jail or correctional institution or facility;

37 (B) residents of a juvenile detention facility, as defined by the revised
38 Kansas code for care of children and the revised Kansas juvenile justice
39 code;

40 (C) students of a public or private university or college, a community
41 college or any other institution of higher learning which is located in
42 Kansas;

43 (D) employees of a business or other employer; or

1 (E) persons receiving inpatient hospice services.

2 (2) "Institutional drug room" does not include:

3 (A) Any registered pharmacy;

4 (B) any office of a practitioner; or

5 (C) a location where no prescription-only drugs are dispensed and no
6 prescription-only drugs other than individual prescriptions are stored or
7 administered.

8 ~~(w)~~(cc) *"Intermediary" means any technology system that receives
9 and transmits an electronic prescription between the prescriber and the
10 pharmacy.*

11 *(dd) "Intracompany transaction" means any transaction or transfer
12 between any division, subsidiary, parent or affiliated or related company
13 under common ownership or control of a corporate entity, or any
14 transaction or transfer between co-licensees of a co-licensed product.*

15 ~~(w)~~(ee) *"Medical care facility" shall have the meaning provided in
16 K.S.A. 65-425, and amendments thereto, except that the term shall also
17 include facilities licensed under the provisions of K.S.A. 75-3307b, and
18 amendments thereto, except community mental health centers and
19 facilities for the mentally retarded.*

20 ~~(z)~~(ff) *"Manufacture" means the production, preparation, propagation,
21 compounding, conversion or processing of a drug either directly or
22 indirectly by extraction from substances of natural origin, independently
23 by means of chemical synthesis or by a combination of extraction and
24 chemical synthesis and includes any packaging or repackaging of the drug
25 or labeling or relabeling of its container, except that this term shall not
26 include the preparation or compounding of a drug by an individual for the
27 individual's own use or the preparation, compounding, packaging or
28 labeling of a drug by:*

29 (1) A practitioner or a practitioner's authorized agent incident to such
30 practitioner's administering or dispensing of a drug in the course of the
31 practitioner's professional practice;

32 (2) a practitioner, by a practitioner's authorized agent or under a
33 practitioner's supervision for the purpose of, or as an incident to, research,
34 teaching or chemical analysis and not for sale; or

35 (3) a pharmacist or the pharmacist's authorized agent acting under the
36 direct supervision of the pharmacist for the purpose of, or incident to, the
37 dispensing of a drug by the pharmacist.

38 ~~(y)~~(gg) *"Manufacturer" means a person licensed or approved by the
39 FDA to engage in the manufacture of drugs and devices.*

40 ~~(z)~~(hh) *"Mid-level practitioner" means an advanced practice
41 registered nurse issued a license pursuant to K.S.A. 65-1131, and
42 amendments thereto, who has authority to prescribe drugs pursuant to a
43 written protocol with a responsible physician under K.S.A. 65-1130, and*

1 *amendments thereto, or a physician assistant licensed pursuant to the*
2 *physician assistant licensure act who has authority to prescribe drugs*
3 *pursuant to a written protocol with a responsible physician under K.S.A.*
4 *65-28a08, and amendments thereto.*

5 (ii) "Normal distribution channel" means a chain of custody for a
6 prescription-only drug that goes from a manufacturer of the prescription-
7 only drug, from that manufacturer to that manufacturer's co-licensed
8 partner, from that manufacturer to that manufacturer's third-party logistics
9 provider, or from that manufacturer to that manufacturer's exclusive
10 distributor, directly or by drop shipment, to:

11 (1) A pharmacy to a patient or to other designated persons authorized
12 by law to dispense or administer such drug to a patient;

13 (2) a wholesale distributor to a pharmacy to a patient or other
14 designated persons authorized by law to dispense or administer such drug
15 to a patient;

16 (3) a wholesale distributor to a chain pharmacy warehouse to that
17 chain pharmacy warehouse's intracompany pharmacy to a patient or other
18 designated persons authorized by law to dispense or administer such drug
19 to a patient; or

20 (4) a chain pharmacy warehouse to the chain pharmacy warehouse's
21 intracompany pharmacy to a patient or other designated persons authorized
22 by law to dispense or administer such drug to a patient.

23 ~~(aa)~~(jj) "Person" means individual, corporation, government,
24 governmental subdivision or agency, partnership, association or any other
25 legal entity.

26 ~~(bb)~~(kk) "Pharmacist" means any natural person licensed under this
27 act to practice pharmacy.

28 ~~(ee)~~(ll) "Pharmacist-in-charge" means the pharmacist who is
29 responsible to the board for a registered establishment's compliance with
30 the laws and regulations of this state pertaining to the practice of
31 pharmacy, manufacturing of drugs and the distribution of drugs. The
32 pharmacist-in-charge shall supervise such establishment on a full-time or a
33 part-time basis and perform such other duties relating to supervision of a
34 registered establishment as may be prescribed by the board by rules and
35 regulations. Nothing in this definition shall relieve other pharmacists or
36 persons from their responsibility to comply with state and federal laws and
37 regulations.

38 (mm) "*Pharmacist intern*" means: (1) *A student currently enrolled in*
39 *an accredited pharmacy program;* (2) *a graduate of an accredited*
40 *pharmacy program serving an internship;* or (3) *a graduate of a pharmacy*
41 *program located outside of the United States which is not accredited and*
42 *who has successfully passed equivalency examinations approved by the*
43 *board.*

1 ~~(dd)~~(nn) "Pharmacy," "drug store" or "apothecary" means premises,
2 laboratory, area or other place: (1) Where drugs are offered for sale where
3 the profession of pharmacy is practiced and where prescriptions are
4 compounded and dispensed; or (2) which has displayed upon it or within it
5 the words "pharmacist," "pharmaceutical chemist," "pharmacy,"
6 "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of
7 these words or combinations of these words or words of similar import
8 either in English or any sign containing any of these words; or (3) where
9 the characteristic symbols of pharmacy or the characteristic prescription
10 sign "Rx" may be exhibited. As used in this subsection, premises refers
11 only to the portion of any building or structure leased, used or controlled
12 by the licensee in the conduct of the business registered by the board at the
13 address for which the registration was issued.

14 ~~(ee)~~ "Pharmacy student" means an individual, registered with the
15 board of pharmacy, enrolled in a accredited school of pharmacy.

16 ~~(oo)~~ "Pharmacy prescription application" means software that is
17 used to process prescription information, is installed on a pharmacy's
18 computers or servers, and is controlled by the pharmacy.

19 ~~(ff)~~(pp) "Pharmacy technician" means an individual who, under the
20 direct supervision and control of a pharmacist, may perform packaging,
21 manipulative, repetitive or other nondiscretionary tasks related to the
22 processing of a prescription or medication order and who assists the
23 pharmacist in the performance of pharmacy related duties, but who does
24 not perform duties restricted to a pharmacist.

25 ~~(gg)~~(qq) "Practitioner" means a person licensed to practice medicine
26 and surgery, dentist, podiatrist, veterinarian, optometrist or scientific
27 investigator or other person authorized by law to use a prescription-only
28 drug in teaching or chemical analysis or to conduct research with respect
29 to a prescription-only drug.

30 ~~(hh)~~(rr) "Preceptor" means a licensed pharmacist who possesses at
31 least two years' experience as a pharmacist and who supervises students
32 obtaining the pharmaceutical experience required by law as a condition to
33 taking the examination for licensure as a pharmacist.

34 ~~(ii)~~ "Prescription" means, according to the context, either a
35 prescription order or a prescription medication.

36 ~~(ss)~~ "Prescriber" means a practitioner or a mid-level practitioner.

37 ~~(jj)~~(tt) "Prescription" or "prescription order" means: (1) An order to
38 be filled by a pharmacist for prescription medication issued and signed by
39 a prescriber in the authorized course of such prescriber's professional
40 practice; or (2) an order transmitted to a pharmacist through word of
41 mouth, note, telephone or other means of communication directed by such
42 prescriber, regardless of whether the communication is oral, electronic,
43 facsimile or in printed form.

1 (uu) "Prescription medication" means any drug, including label and
2 container according to context, which is dispensed pursuant to a
3 prescription order.

4 ~~(kk)~~(vv) "Prescription-only drug" means any drug whether intended
5 for use by man or animal, required by federal or state law (including 21
6 U.S.C. § 353, ~~as amended~~), to be dispensed only pursuant to a written or
7 oral prescription or order of a practitioner or is restricted to use by
8 practitioners only.

9 ~~(ll)~~ "Prescription order" means: (1) An order to be filled by a
10 pharmacist for prescription medication issued and signed by a practitioner
11 or a mid-level practitioner in the authorized course of professional
12 practice; or (2) an order transmitted to a pharmacist through word of
13 mouth, note, telephone or other means of communication directed by such
14 practitioner or mid-level practitioner.

15 ~~(mm)~~(ww) "Probation" means the practice or operation under a
16 temporary license, registration or permit or a conditional license,
17 registration or permit of a business or profession for which a license,
18 registration or permit is granted by the board under the provisions of the
19 pharmacy act of the state of Kansas requiring certain actions to be
20 accomplished or certain actions not to occur before a regular license,
21 registration or permit is issued.

22 ~~(nn)~~(xx) "Professional incompetency" means:

23 (1) One or more instances involving failure to adhere to the
24 applicable standard of pharmaceutical care to a degree which constitutes
25 gross negligence, as determined by the board;

26 (2) repeated instances involving failure to adhere to the applicable
27 standard of pharmaceutical care to a degree which constitutes ordinary
28 negligence, as determined by the board; or

29 (3) a pattern of pharmacy practice or other behavior which
30 demonstrates a manifest incapacity or incompetence to practice pharmacy.

31 ~~(oo)~~(yy) "Readily retrievable" means that records kept by automatic
32 data processing applications or other electronic or mechanized record-
33 keeping systems can be separated out from all other records within a
34 reasonable time not to exceed 48 hours of a request from the board or
35 other authorized agent or that hard-copy records are kept on which
36 certain items are asterisked, redlined or in some other manner visually
37 identifiable apart from other items appearing on the records.

38 (zz) "Retail dealer" means a person selling at retail nonprescription
39 drugs which are prepackaged, fully prepared by the manufacturer or
40 distributor for use by the consumer and labeled in accordance with the
41 requirements of the state and federal food, drug and cosmetic acts. Such
42 nonprescription drugs shall not include: (1) A controlled substance; (2) a
43 prescription-only drug; or (3) a drug intended for human use by

1 hypodermic injection.

2 ~~(pp)~~(aaa) "Secretary" means the executive secretary of the board.

3 ~~(qq)~~(bbb) "Third party logistics provider" means an entity that: (1)
4 Provides or coordinates warehousing, distribution or other services on
5 behalf of a manufacturer, but does not take title to the prescription drug or
6 have general responsibility to direct the prescription drug's sale or
7 disposition; (2) is registered as a wholesale distributor under the pharmacy
8 act of the state of Kansas; and (3) to be considered part of the normal
9 distribution channel, must also be an authorized distributor of record.

10 ~~(rr)~~(ccc) "Unprofessional conduct" means:

11 (1) Fraud in securing a registration or permit;

12 (2) intentional adulteration or mislabeling of any drug, medicine,
13 chemical or poison;

14 (3) causing any drug, medicine, chemical or poison to be adulterated
15 or mislabeled, knowing the same to be adulterated or mislabeled;

16 (4) intentionally falsifying or altering records or prescriptions;

17 (5) unlawful possession of drugs and unlawful diversion of drugs to
18 others;

19 (6) willful betrayal of confidential information under K.S.A. 65-1654,
20 and amendments thereto;

21 (7) conduct likely to deceive, defraud or harm the public;

22 (8) making a false or misleading statement regarding the licensee's
23 professional practice or the efficacy or value of a drug;

24 (9) commission of any act of sexual abuse, misconduct or
25 exploitation related to the licensee's professional practice; or

26 (10) performing unnecessary tests, examinations or services which
27 have no legitimate pharmaceutical purpose.

28 ~~(ss) "Mid-level practitioner" means an advanced practice registered~~
29 ~~nurse issued a license pursuant to K.S.A. 65-1131, and amendments~~
30 ~~thereto, who has authority to prescribe drugs pursuant to a written protocol~~
31 ~~with a responsible physician under K.S.A. 65-1130, and amendments~~
32 ~~thereto, or a physician assistant licensed pursuant to the physician assistant~~
33 ~~licensure act who has authority to prescribe drugs pursuant to a written~~
34 ~~protocol with a responsible physician under K.S.A. 65-28a08, and~~
35 ~~amendments thereto.~~

36 ~~(tt)~~(ddd) "Vaccination protocol" means a written protocol, agreed to
37 by a pharmacist and a person licensed to practice medicine and surgery by
38 the state board of healing arts, which establishes procedures and
39 recordkeeping and reporting requirements for administering a vaccine by
40 the pharmacist for a period of time specified therein, not to exceed two
41 years.

42 (eee) "Valid prescription order" means a prescription that is issued
43 for a legitimate medical purpose by an individual prescriber licensed by

1 *law to administer and prescribe drugs and acting in the usual course of*
2 *such prescriber's professional practice. A prescription issued solely on the*
3 *basis of an internet-based questionnaire or consultation without an*
4 *appropriate prescriber-patient relationship is not a valid prescription*
5 *order.*

6 ~~(ttt)~~(fff) "Veterinary medical teaching hospital pharmacy" means any
7 location where prescription-only drugs are stored as part of an accredited
8 college of veterinary medicine and from which prescription-only drugs are
9 distributed for use in treatment of or administration to a nonhuman.

10 ~~(vvv)~~(ggg) "Wholesale distributor" means any person engaged in
11 wholesale distribution of prescription drugs or devices in or into the state,
12 including, but not limited to, manufacturers, repackagers, own-label
13 distributors, private-label distributors, jobbers, brokers, warehouses,
14 including manufacturers' and distributors' warehouses, co-licensees,
15 exclusive distributors, third party logistics providers, chain pharmacy
16 warehouses that conduct wholesale distributions, and wholesale drug
17 warehouses, independent wholesale drug traders and retail pharmacies that
18 conduct wholesale distributions. Wholesale distributor shall not include
19 persons engaged in the sale of durable medical equipment to consumers or
20 patients.

21 ~~(www)~~(hhh) "Wholesale distribution" means the distribution of
22 prescription drugs or devices by wholesale distributors to persons other
23 than consumers or patients, and includes the transfer of prescription drugs
24 by a pharmacy to another pharmacy if the total number of units of
25 transferred drugs during a twelve-month period does not exceed 5% of the
26 total number of all units dispensed by the pharmacy during the
27 immediately preceding twelve-month period. Wholesale distribution does
28 not include:

29 (1) The sale, purchase or trade of a prescription drug or device, an
30 offer to sell, purchase or trade a prescription drug or device or the
31 dispensing of a prescription drug or device pursuant to a prescription;

32 (2) the sale, purchase or trade of a prescription drug or device or an
33 offer to sell, purchase or trade a prescription drug or device for emergency
34 medical reasons;

35 (3) intracompany transactions, as defined in this section, unless in
36 violation of own use provisions;

37 (4) the sale, purchase or trade of a prescription drug or device or an
38 offer to sell, purchase or trade a prescription drug or device among
39 hospitals, chain pharmacy warehouses, pharmacies or other health care
40 entities that are under common control;

41 (5) the sale, purchase or trade of a prescription drug or device or the
42 offer to sell, purchase or trade a prescription drug or device by a charitable
43 organization described in 503(c)(3) of the internal revenue code of 1954 to

1 a nonprofit affiliate of the organization to the extent otherwise permitted
2 by law;

3 (6) the purchase or other acquisition by a hospital or other similar
4 health care entity that is a member of a group purchasing organization of a
5 prescription drug or device for its own use from the group purchasing
6 organization or from other hospitals or similar health care entities that are
7 members of these organizations;

8 (7) the transfer of prescription drugs or devices between pharmacies
9 pursuant to a centralized prescription processing agreement;

10 (8) the sale, purchase or trade of blood and blood components
11 intended for transfusion;

12 (9) the return of recalled, expired, damaged or otherwise non-salable
13 prescription drugs, when conducted by a hospital, health care entity,
14 pharmacy, chain pharmacy warehouse or charitable institution in
15 accordance with the board's rules and regulations;

16 (10) the sale, transfer, merger or consolidation of all or part of the
17 business of a retail pharmacy or pharmacies from or with another retail
18 pharmacy or pharmacies, whether accomplished as a purchase and sale of
19 stock or business assets, in accordance with the board's rules and
20 regulations;

21 (11) the distribution of drug samples by manufacturers' and
22 authorized distributors' representatives;

23 (12) the sale of minimal quantities of drugs by retail pharmacies to
24 licensed practitioners for office use; or

25 (13) the sale or transfer from a retail pharmacy or chain
26 pharmacy warehouse of expired, damaged, returned or
27 recalled prescription drugs to the original manufacturer,
28 originating wholesale distributor or to a third party returns
29 processor in accordance with the board's rules and regulations.

30 Sec. 2. K.S.A. 2011 Supp. 65-1637 is hereby amended to read as
31 follows: 65-1637. (a) In every store, shop or other place defined in this act
32 as a "pharmacy" there shall be a ~~pharmacist-in-charge~~ *pharmacist-in-*
33 *charge* and, except as otherwise provided by law, the compounding and
34 dispensing of prescriptions shall be limited to pharmacists only. ~~Except as~~
35 ~~otherwise provided by the pharmacy act of this state, when a pharmacist is~~
36 ~~not in attendance at a pharmacy, the premises shall be enclosed and~~
37 ~~secured. Prescription orders may be written, oral, telephonic or by~~
38 ~~electronic transmission unless prohibited by law. Blank forms for written~~
39 ~~prescription orders may have two signature lines. If there are two lines,~~
40 ~~one signature line shall state: "Dispense as written" and the other signature~~
41 ~~line shall state: "Brand exchange permissible." Prescriptions shall only be~~
42 ~~filled or refilled in accordance with the following requirements:~~

43 (a) ~~All prescriptions shall be filled in strict conformity with any~~

1 directions of the prescriber, except that a pharmacist who receives a
2 prescription order for a brand name drug product may exercise brand
3 exchange with a view toward achieving a lesser cost to the purchaser
4 unless:

5 (1) The prescriber, in the case of a prescription signed by the
6 prescriber and written on a blank form containing two signature lines,
7 signs the signature line following the statement "dispense as written," or

8 (2) the prescriber, in the case of a prescription signed by the
9 prescriber, writes in the prescriber's own handwriting "dispense as written"
10 on the prescription, or

11 (3) the prescriber, in the case of a prescription other than one in
12 writing signed by the prescriber, expressly indicates the prescription is to
13 be dispensed as communicated, or

14 (4) the federal food and drug administration has determined that a
15 drug product of the same generic name is not bioequivalent to the
16 prescribed brand name prescription medication.

17 (b) Prescription orders shall be recorded in writing by the pharmacist
18 and the record so made by the pharmacist shall constitute the original
19 prescription to be dispensed by the pharmacist. This record, if telephoned
20 by other than the physician shall bear the name of the person so
21 telephoning. Nothing in this paragraph shall be construed as altering or
22 affecting in any way laws of this state or any federal act requiring a written
23 prescription order.

24 (c) (1) Except as provided in paragraph (2), no prescription shall be
25 refilled unless authorized by the prescriber either in the original
26 prescription or by oral order which is reduced promptly to writing and
27 filled by the pharmacist.

28 (2) A pharmacist may refill a prescription order issued on or after the
29 effective date of this act for any prescription drug except a drug listed on
30 schedule II of the uniform controlled substances act or a narcotic drug
31 listed on any schedule of the uniform controlled substances act without the
32 prescriber's authorization when all reasonable efforts to contact the
33 prescriber have failed and when, in the pharmacist's professional
34 judgment, continuation of the medication is necessary for the patient's
35 health, safety and welfare. Such prescription refill shall only be in an
36 amount judged by the pharmacist to be sufficient to maintain the patient
37 until the prescriber can be contacted, but in no event shall a refill under
38 this paragraph be more than a seven day supply or one package of the
39 drug. However, if the prescriber states on a prescription that there shall be
40 no emergency refilling of that prescription, then the pharmacist shall not
41 dispense any emergency medication pursuant to that prescription. A
42 pharmacist who refills a prescription order under this subsection (c)(2)
43 shall contact the prescriber of the prescription order on the next business

1 day subsequent to the refill or as soon thereafter as possible. No
2 pharmacist shall be required to refill any prescription order under this
3 subsection (c)(2). A prescriber shall not be subject to liability for any
4 damages resulting from the refilling of a prescription order by a
5 pharmacist under this subsection (c)(2) unless such damages are
6 occasioned by the gross negligence or willful or wanton acts or omissions
7 by the prescriber.

8 (d) If any prescription order contains a provision that the prescription
9 may be refilled a specific number of times within or during any particular
10 period, such prescription shall not be refilled except in strict conformity
11 with such requirements.

12 (e) If a prescription order contains a statement that during any
13 particular time the prescription may be refilled at will, there shall be no
14 limitation as to the number of times that such prescription may be refilled
15 except that it may not be refilled after the expiration of the time specified
16 or one year after the prescription was originally issued, whichever occurs
17 first.

18 (f) Any pharmacist who exercises brand exchange and dispenses a
19 less expensive drug product shall not charge the purchaser more than the
20 regular and customary retail price for the dispensed drug.

21 Nothing contained in this section shall be construed as preventing a
22 pharmacist from refusing to fill or refill any prescription if in the
23 pharmacist's professional judgment and discretion such pharmacist is of
24 the opinion that it should not be filled or refilled

25 (b) *Except as otherwise provided by the pharmacy act of this state,*
26 *when a pharmacist is not in attendance at a pharmacy, the premises shall*
27 *be enclosed and secured.*

28 New Sec. 3. (a) The pharmacist shall exercise professional judgment
29 regarding the accuracy, validity and authenticity of any prescription order
30 consistent with federal and state laws and rules and regulations. A
31 pharmacist shall not dispense a prescription drug if the pharmacist, in the
32 exercise of professional judgment, determines that the prescription is not a
33 valid prescription order.

34 (b) The prescriber may authorize an agent to transmit to the pharmacy
35 a prescription order orally, by facsimile transmission or by electronic
36 transmission provided that the first and last names of the transmitting
37 agent are included in the order.

38 (c) (1) A new written or electronically prepared and transmitted
39 prescription order shall be manually or electronically signed by the
40 prescriber. If transmitted by the prescriber's agent, the first and last names
41 of the transmitting agent shall be included in the order.

42 (2) If the prescription is for a controlled substance and is written or
43 printed from an electronic prescription application, the prescription shall

1 be manually signed by the prescriber prior to delivery of the prescription
2 to the patient or prior to facsimile transmission of the prescription to the
3 pharmacy.

4 (3) An electronically prepared prescription shall not be electronically
5 transmitted to the pharmacy if the prescription has been printed prior to
6 electronic transmission. An electronically prepared and transmitted
7 prescription which is printed following electronic transmission shall be
8 clearly labeled as a copy, not valid for dispensing.

9 (4) *The state board of pharmacy shall conduct a study on the issues*
10 *of electronic transmission of prior authorizations and step therapy*
11 *protocols. The report on the results of such study shall be completed and*
12 *submitted to the legislature no later than January 15, 2013. The board is*
13 *hereby authorized to conduct pilot projects related to any new technology*
14 *implementation when deemed necessary and practicable.*

15 (d) An authorization to refill a prescription order or to renew or
16 continue an existing drug therapy may be transmitted to a pharmacist
17 through oral communication, in writing, by facsimile transmission or by
18 electronic transmission initiated by or directed by the prescriber.

19 (1) If the transmission is completed by the prescriber's agent, and the
20 first and last names of the transmitting agent are included in the order, the
21 prescriber's signature is not required on the fax or alternate electronic
22 transmission.

23 (2) If the refill order or renewal order differs in any manner from the
24 original order, such as a change of the drug strength, dosage form or
25 directions for use, the prescriber shall sign the order as provided by
26 paragraph (1).

27 (e) Regardless of the means of transmission to a pharmacy, only a
28 pharmacist or a pharmacist intern shall be authorized to receive a new
29 prescription order from a prescriber or transmitting agent. A pharmacist, a
30 pharmacist intern or a registered pharmacy technician may receive a refill
31 or renewal order from a prescriber or transmitting agent if such registered
32 pharmacy technician's supervising pharmacist has authorized that
33 function.

34 (f) A refill is one or more dispensings of a prescription drug or device
35 that results in the patient's receipt of the quantity authorized by the
36 prescriber for a single fill as indicated on the prescription order.

37 (1) A prescription for a prescription drug or device that is not a
38 controlled substance may authorize no more than 12 refills within 18
39 months following the date on which the prescription is issued.

40 (2) A prescription for a schedule III, IV or V controlled substance
41 may authorize no more than five refills within six months following the
42 date on which the prescription is issued.

43 (g) Prescriptions shall only be filled or refilled in accordance with the

1 following requirements:

2 (1) All prescriptions shall be filled in strict conformity with any
3 directions of the prescriber, except that a pharmacist who receives a
4 prescription order for a brand name drug product may exercise brand
5 exchange with a view toward achieving a lesser cost to the purchaser
6 unless:

7 (A) The prescriber, in the case of a prescription manually or
8 electronically signed by the prescriber and prepared on a form containing
9 two signature lines, signs the signature line following the statement
10 "dispense as written";

11 (B) the prescriber, in the case of a written prescription signed by the
12 prescriber, writes in the prescriber's own handwriting "dispense as written"
13 on the prescription;

14 (C) the prescriber, in the case of a prescription other than one in
15 writing signed by the prescriber, expressly indicates the prescription is to
16 be dispensed as communicated; or

17 (D) the federal food and drug administration has determined that a
18 drug product of the same generic name is not bioequivalent to the
19 prescribed brand name prescription medication.

20 (h) If a prescription order contains a statement that during any
21 particular time the prescription may be refilled at will, there shall be no
22 limitation as to the number of times that such prescription may be refilled
23 except that it may not be refilled after the expiration of the time specified
24 or one year after the prescription was originally issued, whichever occurs
25 first.

26 (i) Prescription orders shall be recorded in writing by the pharmacist
27 and the record so made by the pharmacist shall constitute the original
28 prescription to be dispensed by the pharmacist. This record, if telephoned
29 by other than the prescriber, shall bear the name of the person so
30 telephoning. Nothing in this section shall be construed as altering or
31 affecting in any way laws of this state or any federal act requiring a written
32 prescription order.

33 (j) (1) Except as provided in paragraph (2), no prescription shall be
34 refilled unless authorized by the prescriber either in the original
35 prescription or by oral order which is reduced promptly to writing and
36 filled by the pharmacist.

37 (2) A pharmacist may refill a prescription order issued on or after the
38 effective date of this act for any prescription drug except a drug listed on
39 schedule II of the uniform controlled substances act or a narcotic drug
40 listed on any schedule of the uniform controlled substances act without the
41 prescriber's authorization when all reasonable efforts to contact the
42 prescriber have failed and when, in the pharmacist's professional
43 judgment, continuation of the medication is necessary for the patient's

1 health, safety and welfare. Such prescription refill shall only be in an
2 amount judged by the pharmacist to be sufficient to maintain the patient
3 until the prescriber can be contacted, but in no event shall a refill under
4 this paragraph be more than a seven day supply or one package of the
5 drug. However, if the prescriber states on a prescription that there shall be
6 no emergency refilling of that prescription, then the pharmacist shall not
7 dispense any emergency medication pursuant to that prescription. A
8 pharmacist who refills a prescription order under this subsection (j)(2)
9 shall contact the prescriber of the prescription order on the next business
10 day subsequent to the refill or as soon thereafter as possible. No
11 pharmacist shall be required to refill any prescription order under this
12 subsection (j)(2). A prescriber shall not be subject to liability for any
13 damages resulting from the refilling of a prescription order by a
14 pharmacist under this subsection (j)(2) unless such damages are
15 occasioned by the gross negligence or willful or wanton acts or omissions
16 by the prescriber.

17 (k) If any prescription order contains a provision that the prescription
18 may be refilled a specific number of times within or during any particular
19 period, such prescription shall not be refilled except in strict conformity
20 with such requirements.

21 (l) Any pharmacist who exercises brand exchange and dispenses a
22 less expensive drug product shall not charge the purchaser more than the
23 regular and customary retail price for the dispensed drug.

24 (m) Nothing contained in this section shall be construed as preventing
25 a pharmacist from refusing to fill or refill any prescription if in the
26 pharmacist's professional judgment and discretion such pharmacist is of
27 the opinion that it should not be filled or refilled.

28 Sec. 4. K.S.A. 2011 Supp. 65-1683 is hereby amended to read as
29 follows: 65-1683. (a) The board shall establish and maintain a prescription
30 monitoring program for the monitoring of scheduled substances and drugs
31 of concern dispensed in this state or dispensed to an address in this state.

32 (b) Each dispenser shall submit to the board by electronic means
33 information required by the board regarding each prescription dispensed
34 for a substance included under subsection (a). The board shall promulgate
35 rules and regulations specifying the nationally recognized
36 telecommunications format to be used for submission of information that
37 each dispenser shall submit to the board. Such information may include,
38 but not be limited to:

- 39 (1) The dispenser identification number;
- 40 (2) the date the prescription is filled;
- 41 (3) the prescription number;
- 42 (4) whether the prescription is new or is a refill;
- 43 (5) the national drug code for the drug dispensed;

- 1 (6) the quantity dispensed;
- 2 (7) the number of days supply of the drug;
- 3 (8) the patient identification number;
- 4 (9) the patient's name;
- 5 (10) the patient's address;
- 6 (11) the patient's date of birth;
- 7 (12) the prescriber identification number;
- 8 (13) the date the prescription was issued by the prescriber; and
- 9 (14) the source of payment for the prescription.

10 (c) The board shall promulgate rules and regulations specifying the
11 transmission methods and frequency of the dispenser submissions required
12 under subsection (b).

13 (d) The board may issue a waiver to a dispenser that is unable to
14 submit prescription information by electronic means. Such waiver may
15 permit the dispenser to submit prescription information by paper form or
16 other means, provided that all information required by rules and
17 regulations is submitted in this alternative format.

18 (e) *The board is hereby authorized to apply for and to accept grants
19 and may accept any donation, gift or bequest made to the board for
20 furthering any phase of the prescription monitoring program.*

21 (f) *The board shall remit all moneys received by it under subsection
22 (e) to the state treasurer in accordance with the provisions of K.S.A. 75-
23 4215, and amendments thereto. Upon receipt of such remittance, the state
24 treasurer shall deposit the entire amount in the state treasury to the credit
25 of the non-federal gifts and grants fund. All expenditures from such fund
26 shall be made in accordance with appropriation acts upon warrants of the
27 director of accounts and reports issued pursuant to vouchers approved by
28 the president of the board or a person designated by the president.*

29 Sec. 5. K.S.A. 2011 Supp. 65-1685 is hereby amended to read as
30 follows: 65-1685. (a) The prescription monitoring program database, all
31 information contained therein and any records maintained by the board, or
32 by any entity contracting with the board, submitted to, maintained or
33 stored as a part of the database, shall be privileged and confidential, shall
34 not be subject to subpoena or discovery in civil proceedings and may only
35 be used for investigatory or evidentiary purposes related to violations of
36 state or federal law and regulatory activities of entities charged with
37 administrative oversight of those persons engaged in the prescribing or
38 dispensing of scheduled substances and drugs of concern, shall not be a
39 public record and shall not be subject to the Kansas open records act,
40 K.S.A. 45-215 *et seq.*, and amendments thereto, except as provided in
41 subsections (c) and (d).

42 (b) The board shall maintain procedures to ensure that the privacy
43 and confidentiality of patients and patient information collected, recorded,

1 transmitted and maintained is not disclosed to persons except as provided
2 in subsections (c) and (d).

3 (c) The board is hereby authorized to provide data in the prescription
4 monitoring program to the following persons:

5 (1) Persons authorized to prescribe or dispense scheduled substances
6 and drugs of concern, for the purpose of providing medical or
7 pharmaceutical care for their patients;

8 (2) an individual who requests the individual's own prescription
9 monitoring information in accordance with procedures established by the
10 board;

11 (3) designated representatives from the professional licensing,
12 certification or regulatory agencies charged with administrative oversight
13 of those persons engaged in the prescribing or dispensing of scheduled
14 substances and drugs of concern;

15 (4) local, state and federal law enforcement or prosecutorial officials
16 engaged in the administration, investigation or enforcement of the laws
17 governing scheduled substances and drugs of concern subject to the
18 requirements in K.S.A. 22-2502, and amendments thereto;

19 (5) designated representatives from the ~~Kansas health policy authority~~
20 *department of health and environment* regarding authorized medicaid
21 program recipients;

22 (6) persons authorized by a grand jury subpoena, inquisition
23 subpoena or court order in a criminal action;

24 (7) personnel of the prescription monitoring program advisory
25 committee for the purpose of operation of the program; ~~and~~

26 (8) personnel of the board for purposes of administration and
27 enforcement of this act or the uniform controlled substances act, K.S.A.
28 65-4101 *et seq.*, and amendments thereto;

29 (9) *persons authorized to prescribe or dispense scheduled substances*
30 *and drugs of concern, when an individual is obtaining prescriptions in a*
31 *manner that appears to be misuse, abuse or diversion of scheduled*
32 *substances or drugs of concern; and*

33 (10) *medical examiners, coroners or other persons authorized under*
34 *law to investigate or determine causes of death.*

35 (d) *The prescription monitoring program advisory committee*
36 *established pursuant to K.S.A. 65-1689, and amendments thereto, is*
37 *authorized to review and analyze the data for purposes of identifying*
38 *patterns and activity of concern.*

39 (1) *If a review of information appears to indicate a person may be*
40 *obtaining prescriptions in a manner that may represent misuse or abuse of*
41 *controlled substances and drugs of concern, the advisory committee is*
42 *authorized to notify the prescribers and dispensers who prescribed or*
43 *dispensed the prescriptions. If the review identifies patterns or other*

1 *evidence sufficient to create a reasonable suspicion of criminal activity,*
2 *the advisory committee is authorized to notify the appropriate law*
3 *enforcement agency.*

4 *(2) If a review of information appears to indicate that a violation of*
5 *state or federal law relating to prescribing controlled substances and*
6 *drugs of concern may have occurred, or that a prescriber or dispenser has*
7 *knowingly prescribed, dispensed or obtained controlled substances and*
8 *drugs of concern in a manner that is inconsistent with recognized*
9 *standards of care for the profession, the advisory committee shall*
10 *determine whether a report to the professional licensing, certification or*
11 *regulatory agencies charged with administrative oversight of those*
12 *persons engaged in prescribing or dispensing of controlled substances and*
13 *drugs of concern or to the appropriate law enforcement agency is*
14 *warranted.*

15 *(A) For purposes of such determination the advisory committee may,*
16 *in consultation with the appropriate regulatory agencies and professional*
17 *organizations, establish criteria regarding appropriate standards and*
18 *utilize volunteer peer review committees of professionals with expertise in*
19 *the particular practice to create such standards and review individual*
20 *cases.*

21 *(B) The peer review committee or committees appointed herein shall*
22 *have authority to request and receive information in the prescription*
23 *monitoring program database from the director of the prescription*
24 *monitoring program.*

25 *(C) If the determination is made that a referral to a regulatory or law*
26 *enforcement agency is not warranted but educational or professional*
27 *advising might be appropriate, the advisory committee may refer the*
28 *prescribers or dispensers to other such resources.*

29 *(e) The board is hereby authorized to provide data in the prescription*
30 *monitoring program to public or private entities for statistical, research or*
31 *educational purposes after removing information that could be used to*
32 *identify individual practitioners, dispensers, patients or persons who*
33 *received prescriptions from dispensers.*

34 *Sec. 6. K.S.A. 2011 Supp. 65-1693 is hereby amended to read as*
35 *follows: 65-1693. (a) A dispenser who knowingly fails to submit*
36 *prescription monitoring information to the board as required by this act or*
37 *knowingly submits incorrect prescription monitoring information shall be*
38 *guilty of a severity level 10, nonperson felony.*

39 *(b) A person authorized to have prescription monitoring information*
40 *pursuant to this act who knowingly discloses such information in violation*
41 *of this act shall be guilty of a severity level 10, nonperson felony.*

42 *(c) A person authorized to have prescription monitoring information*
43 *pursuant to this act who knowingly uses such information in a manner or*

1 for a purpose in violation of this act shall be guilty of a severity level 10,
2 nonperson felony.

3 (d) *A person who knowingly, and without authorization, obtains or*
4 *attempts to obtain prescription monitoring information shall be guilty of a*
5 *severity level 10, nonperson felony.*

6 (e) It shall not be a violation of this act for a practitioner or dispenser
7 to disclose or use information obtained pursuant to this act when such
8 information is disclosed or used solely in the course of such practitioner's
9 or dispenser's care of the patient who is the subject of the information.

10 Sec. 7. K.S.A. 2011 Supp. 65-4101 is hereby amended to read as
11 follows: 65-4101. As used in this act: (a) "Administer" means the direct
12 application of a controlled substance, whether by injection, inhalation,
13 ingestion or any other means, to the body of a patient or research subject
14 by: (1) A practitioner or pursuant to the lawful direction of a practitioner;
15 or (2) the patient or research subject at the direction and in the presence
16 of the practitioner.

17 (b) "Agent" means an authorized person who acts on behalf of or at
18 the direction of a manufacturer, distributor or dispenser. It does not include
19 a common carrier, public warehouseman or employee of the carrier or
20 warehouseman.

21 (c) *"Application service provider" means an entity that sells*
22 *electronic prescription or pharmacy prescription applications as a hosted*
23 *service where the entity controls access to the application and maintains*
24 *the software and records on its server.*

25 ~~(e)~~(d) "Board" means the state board of pharmacy.

26 ~~(d)~~(e) "Bureau" means the bureau of narcotics and dangerous drugs,
27 United States department of justice, or its successor agency.

28 ~~(e)~~(f) "Controlled substance" means any drug, substance or
29 immediate precursor included in any of the schedules designated in K.S.A.
30 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments
31 thereto.

32 (g) (1) *"Controlled substance analog" means a substance that is*
33 *intended for human consumption, and:*

34 (A) *The chemical structure of which is substantially similar to the*
35 *chemical structure of a controlled substance listed in or added to the*
36 *schedules designated in K.S.A. 65-4105 or 65-4107, and amendments*
37 *thereto;*

38 (B) *which has a stimulant, depressant or hallucinogenic effect on the*
39 *central nervous system substantially similar to the stimulant, depressant*
40 *or hallucinogenic effect on the central nervous system of a controlled*
41 *substance included in the schedules designated in K.S.A. 65-4105 or 65-*
42 *4107, and amendments thereto; or*

43 (C) *with respect to a particular individual, which such individual*

1 *represents or intends to have a stimulant, depressant or hallucinogenic*
2 *effect on the central nervous system substantially similar to the stimulant,*
3 *depressant or hallucinogenic effect on the central nervous system of a*
4 *controlled substance included in the schedules designated in K.S.A. 65-*
5 *4105 or 65-4107, and amendments thereto.*

6 (2) "Controlled substance analog" does not include:

7 (A) A controlled substance;

8 (B) a substance for which there is an approved new drug application;

9 or

10 (C) a substance with respect to which an exemption is in effect for
11 *investigational use by a particular person under section 505 of the federal*
12 *food, drug and cosmetic act, 21 U.S.C. § 355, to the extent conduct with*
13 *respect to the substance is permitted by the exemption.*

14 ~~(h)~~ "Counterfeit substance" means a controlled substance which, or
15 the container or labeling of which, without authorization bears the
16 trademark, trade name or other identifying mark, imprint, number or
17 device or any likeness thereof of a manufacturer, distributor or dispenser
18 other than the person who in fact manufactured, distributed or dispensed
19 the substance.

20 ~~(i)~~ "Cultivate" means the planting or promotion of growth of five
21 or more plants which contain or can produce controlled substances.

22 (j) "DEA" mean the U.S. department of justice, drug enforcement
23 administration.

24 (k) "Deliver" or "delivery" means the actual, constructive or
25 attempted transfer from one person to another of a controlled substance,
26 whether or not there is an agency relationship.

27 ~~(l)~~ "Dispense" means to deliver a controlled substance to an
28 ultimate user or research subject by or pursuant to the lawful order of a
29 practitioner, including the packaging, labeling or compounding necessary
30 to prepare the substance for that delivery, or pursuant to the prescription of
31 a mid-level practitioner.

32 ~~(m)~~ "Dispenser" means a practitioner or pharmacist who dispenses.

33 ~~(n)~~ "Distribute" means to deliver other than by administering or
34 dispensing a controlled substance.

35 ~~(o)~~ "Distributor" means a person who distributes.

36 ~~(p)~~ "Drug" means:

37 (1) Substances recognized as drugs in the official United States
38 pharmacopoeia, official homeopathic pharmacopoeia of the United States
39 or official national formulary or any supplement to any of them;

40 (2) substances intended for use in the diagnosis, cure, mitigation,
41 treatment or prevention of disease in man or animals;

42 (3) substances, ~~(other than food)~~, intended to affect the structure or
43 any function of the body of man or animals; and

1 (4) substances intended for use as a component of any article
2 specified in clause (1), (2) or (3) of this subsection. It does not include
3 devices or their components, parts or accessories.

4 ~~(m)~~(q) "Immediate precursor" means a substance which the board has
5 found to be and by rule and regulation designates as being the principal
6 compound commonly used or produced primarily for use and which is an
7 immediate chemical intermediary used or likely to be used in the
8 manufacture of a controlled substance, the control of which is necessary to
9 prevent, curtail or limit manufacture.

10 ~~(n)~~(r) "*Electronic prescription*" means an electronically prepared
11 prescription that is authorized and transmitted from the prescriber to the
12 pharmacy by means of electronic transmission.

13 (s) "*Electronic prescription application*" means software that is used
14 to create electronic prescriptions and that is intended to be installed on the
15 prescriber's computers and servers where access and records are
16 controlled by the prescriber.

17 (t) "*Electronic signature*" means a confidential personalized digital
18 key, code, number or other method for secure electronic data
19 transmissions which identifies a particular person as the source of the
20 message, authenticates the signatory of the message and indicates the
21 person's approval of the information contained in the transmission.

22 (u) "*Electronic transmission*" means the transmission of an electronic
23 prescription, formatted as an electronic data file, from a prescriber's
24 electronic prescription application to a pharmacy's computer, where the
25 data file is imported into the pharmacy prescription application.

26 (v) "*Electronically prepared prescription*" means a prescription that
27 is generated using an electronic prescription application.

28 (w) "*Facsimile transmission*" or "*fax transmission*" means the
29 transmission of a digital image of a prescription from the prescriber or the
30 prescriber's agent to the pharmacy. "*Facsimile transmission*" includes, but
31 is not limited to, transmission of a written prescription between the
32 prescriber's fax machine and the pharmacy's fax machine; transmission of
33 an electronically prepared prescription from the prescriber's electronic
34 prescription application to the pharmacy's fax machine, computer or
35 printer; or transmission of an electronically prepared prescription from
36 the prescriber's fax machine to the pharmacy's fax machine, computer or
37 printer.

38 (x) "*Intermediary*" means any technology system that receives and
39 transmits an electronic prescription between the prescriber and the
40 pharmacy.

41 (y) "*Isomer*" means all enantiomers and diastereomers.

42 (z) "*Manufacture*" means the production, preparation, propagation,
43 compounding, conversion or processing of a controlled substance either

1 directly or indirectly or by extraction from substances of natural origin or
2 independently by means of chemical synthesis or by a combination of
3 extraction and chemical synthesis and includes any packaging or
4 repackaging of the substance or labeling or relabeling of its container,
5 except that this term does not include the preparation or compounding of a
6 controlled substance by an individual for the individual's own lawful use
7 or the preparation, compounding, packaging or labeling of a controlled
8 substance:

9 (1) By a practitioner or the practitioner's agent pursuant to a lawful
10 order of a practitioner as an incident to the practitioner's administering or
11 dispensing of a controlled substance in the course of the practitioner's
12 professional practice; or

13 (2) by a practitioner or by the practitioner's authorized agent under
14 such practitioner's supervision for the purpose of or as an incident to
15 research, teaching or chemical analysis or by a pharmacist or medical care
16 facility as an incident to dispensing of a controlled substance.

17 ~~(a)~~(aa) "Marijuana" means all parts of all varieties of the plant
18 *Cannabis* whether growing or not, the seeds thereof, the resin extracted
19 from any part of the plant and every compound, manufacture, salt,
20 derivative, mixture or preparation of the plant, its seeds or resin. It does
21 not include the mature stalks of the plant, fiber produced from the stalks,
22 oil or cake made from the seeds of the plant, any other compound,
23 manufacture, salt, derivative, mixture or preparation of the mature stalks,
24 except the resin extracted therefrom, fiber, oil, or cake or the sterilized
25 seed of the plant which is incapable of germination.

26 ~~(b)~~(bb) "*Medical care facility*" shall have the meaning ascribed to
27 that term in K.S.A. 65-425, and amendments thereto.

28 (cc) "*Mid-level practitioner*" means an advanced practice registered
29 nurse issued a license pursuant to K.S.A. 65-1131, and amendments
30 thereto, who has authority to prescribe drugs pursuant to a written
31 protocol with a responsible physician under K.S.A. 65-1130, and
32 amendments thereto, or a physician assistant licensed under the physician
33 assistant licensure act who has authority to prescribe drugs pursuant to a
34 written protocol with a responsible physician under K.S.A. 65-28a08, and
35 amendments thereto.

36 (dd) "Narcotic drug" means any of the following whether produced
37 directly or indirectly by extraction from substances of vegetable origin or
38 independently by means of chemical synthesis or by a combination of
39 extraction and chemical synthesis:

40 (1) Opium and opiate and any salt, compound, derivative or
41 preparation of opium or opiate;

42 (2) any salt, compound, isomer, derivative or preparation thereof
43 which is chemically equivalent or identical with any of the substances

1 referred to in clause (1) but not including the isoquinoline alkaloids of
2 opium;

3 (3) opium poppy and poppy straw;

4 (4) coca leaves and any salt, compound, derivative or preparation of
5 coca leaves, and any salt, compound, isomer, derivative or preparation
6 thereof which is chemically equivalent or identical with any of these
7 substances, but not including decocainized coca leaves or extractions of
8 coca leaves which do not contain cocaine or ecgonine.

9 ~~(e)~~(ee) "Opiate" means any substance having an addiction-forming or
10 addiction-sustaining liability similar to morphine or being capable of
11 conversion into a drug having addiction-forming or addiction-sustaining
12 liability. It does not include, unless specifically designated as controlled
13 under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer
14 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does
15 include its racemic and levorotatory forms.

16 ~~(f)~~(ff) "Opium poppy" means the plant of the species *Papaver*
17 *somniferum* L. except its seeds.

18 ~~(g)~~(gg) "Person" means individual, corporation, government, or
19 governmental subdivision or agency, business trust, estate, trust,
20 partnership or association or any other legal entity.

21 ~~(h)~~(hh) "Pharmacist" means any natural person licensed under K.S.A.
22 65-1625, et seq., to practice pharmacy.

23 (ii) "Pharmacist intern" means: (1) A student currently enrolled in an
24 accredited pharmacy program; (2) a graduate of an accredited pharmacy
25 program serving such person's internship; or (3) a graduate of a
26 pharmacy program located outside of the United States which is not
27 accredited and who had successfully passed equivalency examinations
28 approved by the board.

29 (jj) "Pharmacy prescription application" means software that is used
30 to process prescription information, is installed on a pharmacy's
31 computers and servers, and is controlled by the pharmacy.

32 (kk) "Poppy straw" means all parts, except the seeds, of the opium
33 poppy, after mowing.

34 ~~(u)~~ "Pharmacist" means an individual currently licensed by the board
35 to practice the profession of pharmacy in this state.

36 ~~(v)~~(ll) "Practitioner" means a person licensed to practice medicine
37 and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the
38 optometry law as a therapeutic licensee or diagnostic and therapeutic
39 licensee, or scientific investigator or other person authorized by law to use
40 a controlled substance in teaching or chemical analysis or to conduct
41 research with respect to a controlled substance.

42 ~~(w)~~(mm) "Prescriber" means a practitioner or a mid-level
43 practitioner.

1 (nn) "Production" includes the manufacture, planting, cultivation,
2 growing or harvesting of a controlled substance.

3 ~~(oo)~~ "Readily retrievable" means that records kept by automatic
4 data processing applications or other electronic or mechanized record-
5 keeping systems can be separated out from all other records within a
6 reasonable time not to exceed 48 hours of a request from the board or
7 other authorized agent or that hard-copy records are kept on which
8 certain items are asterisked, redlined or in some other manner visually
9 identifiable apart from other items appearing on the records.

10 (pp) "Ultimate user" means a person who lawfully possesses a
11 controlled substance for such person's own use or for the use of a member
12 of such person's household or for administering to an animal owned by
13 such person or by a member of such person's household.

14 ~~(y)~~ "Isomer" means all enantiomers and diastereomers.

15 ~~(z)~~ "Medical care facility" shall have the meaning ascribed to that
16 term in K.S.A. 65-425, and amendments thereto.

17 ~~(aa)~~ "Cultivate" means the planting or promotion of growth of five or
18 more plants which contain or can produce controlled substances.

19 ~~(bb) (1)~~ "Controlled substance analog" means a substance that is
20 intended for human consumption, and:

21 ~~(A)~~ The chemical structure of which is substantially similar to the
22 chemical structure of a controlled substance listed in or added to the
23 schedules designated in K.S.A. 65-4105 or 65-4107, and amendments
24 thereto;

25 ~~(B)~~ which has a stimulant, depressant or hallucinogenic effect on the
26 central nervous system substantially similar to the stimulant, depressant or
27 hallucinogenic effect on the central nervous system of a controlled
28 substance included in the schedules designated in K.S.A. 65-4105 or 65-
29 4107, and amendments thereto; or

30 ~~(C)~~ with respect to a particular individual, which the individual
31 represents or intends to have a stimulant, depressant or hallucinogenic
32 effect on the central nervous system substantially similar to the stimulant,
33 depressant or hallucinogenic effect on the central nervous system of a
34 controlled substance included in the schedules designated in K.S.A. 65-
35 4105 or 65-4107, and amendments thereto.

36 ~~(2)~~ "Controlled substance analog" does not include:

37 ~~(A)~~ A controlled substance;

38 ~~(B)~~ a substance for which there is an approved new drug application;

39 or

40 ~~(C)~~ a substance with respect to which an exemption is in effect for
41 investigational use by a particular person under section 505 of the federal
42 food, drug, and cosmetic act (21 U.S.C. § 355) to the extent conduct with
43 respect to the substance is permitted by the exemption.

1 ~~(cc) "Mid-level practitioner" means an advanced practice registered~~
2 ~~nurse issued a license pursuant to K.S.A. 65-1131, and amendments~~
3 ~~thereto, who has authority to prescribe drugs pursuant to a written protocol~~
4 ~~with a responsible physician under K.S.A. 65-1130, and amendments~~
5 ~~thereto, or a physician assistant licensed under the physician assistant~~
6 ~~licensure act who has authority to prescribe drugs pursuant to a written~~
7 ~~protocol with a responsible physician under K.S.A. 65-28a08, and~~
8 ~~amendments thereto.~~

9 Sec. 8. K.S.A. 65-4123 is hereby amended to read as follows: 65-
10 4123. (a) Except as otherwise provided in K.S.A. 65-4117, and
11 amendments thereto, or in this subsection (a), no schedule I controlled
12 substance may be dispensed. The board by rules and regulations may
13 designate in accordance with the provisions of this subsection (a) a
14 schedule I controlled substance as a schedule I designated prescription
15 substance. ~~A schedule I controlled substance designated as a schedule I~~
16 ~~designated prescription substance may be dispensed only upon the written~~
17 ~~prescription of a practitioner. Prior to designating a schedule I controlled~~
18 ~~substance as a schedule I designated prescription substance, the board shall~~
19 ~~find: (1) That the schedule I controlled substance has an accepted medical~~
20 ~~use in treatment in the United States; (2) that the public health will benefit~~
21 ~~by the designation of the substance as a schedule I designated prescription~~
22 ~~substance; and (3) that the substance may be sold lawfully under federal~~
23 ~~law pursuant to a prescription. No prescription for a schedule I designated~~
24 ~~prescription substance may be refilled.~~

25 (b) Except when dispensed by a practitioner, other than a pharmacy,
26 to an ultimate user, no controlled substance in schedule II may be
27 dispensed without the written *or electronic* prescription of a ~~practitioner or~~
28 ~~a mid-level practitioner~~ *prescriber*. In emergency situations, as defined by
29 rules and regulations of the board, schedule II drugs may be dispensed
30 upon oral prescription of a ~~practitioner or a mid-level~~
31 ~~practitioner~~ *prescriber* reduced promptly to writing *or transmitted*
32 *electronically* and filed by the pharmacy. No prescription for a schedule II
33 substance may be refilled.

34 (c) Except when dispensed by a practitioner, other than a pharmacy,
35 to an ultimate user, a controlled substance included in schedule III, ~~or~~ IV
36 ~~or V~~ which is a prescription drug shall not be dispensed without ~~a written~~
37 ~~or oral prescription of a practitioner or a mid-level practitioner~~ *either a*
38 *paper prescription manually signed by a prescriber, a facsimile of a*
39 *manually signed paper prescription transmitted by the prescriber or the*
40 *prescriber's agent to the pharmacy, an electronic prescription that has*
41 *been digitally signed by a prescriber with a digital certificate, or an oral*
42 *prescription made by an individual prescriber and promptly reduced to*
43 *writing*. The prescription shall not be filled or refilled more than six

1 months after the date thereof or be refilled more than five times.

2 (d) A controlled substance shall not be distributed or dispensed ~~other~~
3 ~~than for a medical purpose. Prescriptions shall be retained in conformity~~
4 ~~with the requirements of K.S.A. 65-4121 and amendments thereto. except~~
5 *by a valid prescription order as defined in K.S.A. 65-1626, and*
6 *amendments thereto. Electronic prescriptions shall be retained*
7 *electronically for five years from the date of their creation or receipt. The*
8 *records must be readily retrievable from all other records and easily*
9 *rendered into a format a person can read. Paper, oral and facsimile*
10 *prescriptions shall be maintained as a hard copy for five years at the*
11 *registered location.*

12 Sec. 9. K.S.A. 65-4123 and K.S.A. 2011 Supp. 65-1626, 65-1637, 65-
13 1683, 65-1685, 65-1693 and 65-4101 are hereby repealed.

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