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**Testimony to the Senate Judiciary Committee
In Support of SB238
February 14, 2023**

Chair Warren and Committee Members:

Our associations support SB238. SB238 is very similar to HB2398, except SB238 adds a provision about packaging controlled substances in a manner likely to attract minors. Those provisions are on page 14, lines 16-22. We support this proposed amendment.

It also adds the amendment to KSA 21-5705, Distribution of Controlled Substances, on page 8, line 37. This amendment enhances the penalty for distribution of “fentanyl-related controlled substances.” We are unsure what the intent of this amendment is.

This bill addresses our nationwide fentanyl issue from the supply chain side. Fentanyl is a very dangerous drug that is most often not sold to end users in pure form but mixed with other types of drugs. Often these fentanyl-laced drugs are pressed into tablet form or placed in capsules to mimic real prescription drugs. And although many users do not have prescriptions for what they are taking, they are tricked into falsely believing they are consuming a prescription grade substance. The forensic laboratories in Kansas are seeing a significant percentage of illegal drugs laced with fentanyl and/or pressed into what looks like pharmaceutical grade drugs. And by now, we are all aware of the high death rates occurring because of the fentanyl problems we are facing.

This bill proposes two themes of change to the law: 1) Addressing the issue of pill pressing and using capsules to make illicit drugs appear to be pharmaceutical grade drugs in the crime of manufacturing, and 2) lacing other drugs with fentanyl in the crime of drug distribution. It does not change any laws on the simple possession of illegal drugs.

The bill first addresses the pill pressing or placing illicit drugs in capsule form by including those acts in the amendment to the definition of manufacturing. By doing this, the law is clear that those actions are included in the crime of manufacturing illegal drugs. These changes are on page 4, lines 24-25.

Second, continuing on the issue of pill pressing, the bill also amends KSA 21-5703, the criminal statute on manufacturing controlled substances, by proposing modifications to the penalties for manufacturing. It adds “or is a fentanyl-related controlled substance” to subsection (b)(3), on page 7, lines 5 and 6. This increases the penalty for the first offense of manufacturing a “fentanyl-related controlled substance” as a Drug SL1 felony. This is the same step that was

taken years ago by adding a similar provision for the first offense of manufacturing methamphetamine. This was an effective aid in addressing the meth manufacturing problem. The first offense of manufacturing, including fentanyl, is currently a Drug SL 2 felony.

A definition of “fentanyl-related controlled substance” is added in the new language on page 4, lines 9-15. This definition will apply throughout Chapter 21 Article 57.

The bill proposes amending KSA 21-6805, by adding a special sentencing provision on page 14, lines 10-15. This would require a sentence for a conviction of distributing a controlled substance containing any “fentanyl-related controlled substance” to be presumed imprisonment and double the sentence specified in the distribution of controlled substance statute.

Finally, the bill does not make any increases in sentencing or new violations relating to simple possession.

We believe these changes will make a meaningful difference in addressing the contribution of illegal manufacturing and distribution of fentanyl and fentanyl laced controlled drugs.

We encourage you to move this bill forward favorably.

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