

HOUSE BILL No. 2576

By Committee on Health and Human Services

1-28

9 AN ACT concerning durable medical equipment; relating to sales of ox-
10 ygen; amending K.S.A. 2009 Supp. 65-1643 and repealing the existing
11 section; also repealing K.S.A. 2009 Supp. 65-1643c.
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 Supp. 65-1643 is hereby amended to read as
15 follows: 65-1643. It shall be unlawful:

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

33 (b) For any person to manufacture within this state any drugs except
34 under the personal and immediate supervision of a pharmacist or such
35 other person or persons as may be approved by the board after an inves-
36 tigation and a determination by the board that such person or persons is
37 qualified by scientific or technical training or experience to perform such
38 duties of supervision as may be necessary to protect the public health and
39 safety; and no person shall manufacture any such drugs without first ob-
40 taining a registration so to do from the board. Such registration shall be
41 subject to such rules and regulations with respect to requirements, sani-
42 tation and equipment, as the board may from time to time adopt for the
43 protection of public health and safety.

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

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

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

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

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

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

42 (i) For any person to be a pharmacy student without first obtaining
43 a registration to do so from the board, in accordance with rules and reg-

1 ulations adopted by the board, and paying a pharmacy student registration
2 fee of \$25 to the board.

3 (j) For any person to operate a veterinary medical teaching hospital
4 pharmacy without first having obtained a registration to do so from the
5 board. Such registration shall be subject to the provisions of K.S.A. 65-
6 1662 and amendments thereto and any rules and regulations adopted
7 pursuant thereto.

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

11 (1) (A) Such controlled substance is sold or distributed by a licensed
12 pharmacist, a registered pharmacy technician or a pharmacy intern or
13 clerk supervised by a licensed pharmacist;

14 (B) any person purchasing, receiving or otherwise acquiring any such
15 controlled substance produces a photo identification showing the date of
16 birth of the person and signs a log and enters in the log, or allows the
17 seller to enter in the log, such person's address and the date and time of
18 sale or allows the seller to enter such information into an electronic log-
19 ging system pursuant to K.S.A. 2009 Supp. 65-16,102, and amendments
20 thereto. The log or database required by the board shall be available for
21 inspection during regular business hours to the board of pharmacy and
22 any law enforcement officer;

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

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

28 (2) there is a lawful prescription.

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

34 (m) A seller who in good faith releases information in a log pursuant
35 to subsection (k) to any law enforcement officer is immune from civil
36 liability for such release unless the release constitutes gross negligence
37 or intentional, wanton or willful misconduct.

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

42 (1) Sales not made in the regular course of the person's business; ~~or~~

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1 (2) sales by charitable organizations exempt from federal income tax-
2 ation pursuant to the internal revenue code of 1986, as amended; *or*

3 (3) *sales of oxygen other than sales of oxygen delivery systems and*
4 *sales of oxygen by entities which bottle the oxygen.*

5 Sec. 2. K.S.A. 2009 Supp. 65-1643 and 65-1643c are hereby
6 repealed.

7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the statute book.