

Approved: March 4, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on February 24, 1998 in Room 514-S of the Capitol.

All members were present except: Senator Donovan (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Paul Morrison, Johnson County District Attorney
Brenda Sharp, Sunflower House, Johnson County
Kyle Smith, Assistant Attorney General, KBI
Hal Hudson, Kansas Pest Control
Kevin Kraushaar, Non prescription Drug Manufacturers Asso.

Others attending: See attached list

The minutes of the February 23 meeting were approved on a motion by Senator Bond and a second by Senator Schraad. Motion carried.

SB 641 - Child in need of care reports to include certain audio and video tape statements used in child abuse and neglect investigations

Conferee Morrison testified in support of **SB 641**. He stated that this amendment to K.S.A. 38-1507 assures confidentiality of certain audio and/or video tapes made at the request of SRS or law enforcement for investigation into child abuse or neglect cases and that the release of these tapes could only be made to authorized persons or through a district court order. (attachment 1)

Conferee Sharp testified in support of **SB 641**. She presented a brief review of Sunflower House, the first child advocacy organization in the State of Kansas and urged passage of the bill. (no attachment)

Senator Schraad moved to pass the bill out favorably. Senator Bond seconded. Motion carried.

SB 667 - Enacting the Kansas chemical control act

Senator Schraad, testifying in support of **SB 667**, summarized the growing problem regarding the production of methamphetamines (meth) throughout the nation. He stated that since several states have enacted legislation to curb this problem, the illegal drug producers have gravitated toward states where there is easy access to source chemicals. He stated that the purpose of the bill is to serve as a "preventative measure - seeking to stop illegal drug activity before it happens". (attachment 2)

Conferee Smith testified in support of **SB 667**. He discussed the widespread problem of methamphetamine (meth) production in the State of Kansas and reviewed the history of **SB 667** (the bill which addresses this issue) stating that it was a result of a 1997 conference on drug legislation sponsored by Attorney General Stovall. He stated that the bill was drafted off the Model Chemical Control Act and that as of April 1993, 18 states had chemical control statutes. He presented a brief background on the National Alliance for Model State Drug Laws and briefly reviewed the essentials of **SB 667**, what it does and how it regulates the most commonly utilized chemicals in clandestine labs. He discussed the numerous protections and exemptions for legitimate use of chemicals. (attachment 3 & 4) He briefly reviewed a list of State Chemical Control Statutes (attachment 5) and a brochure on methamphetamines. The fiscal impact of implementing this bill was discussed. It was noted by the Chair that written testimony from KDHE had been distributed. (attachment 6) Further discussion followed on the listing of chemicals within the bill. It was suggested that KDHE, who administers the permitting system, be given the authority to determine which chemicals should be restricted. Following further discussion the Chair recommended the list of chemicals in the bill be cut to those identified by the KBI as the source of the problem now and to keep the discretionary power of KDHE in the bill.

Conferee Hudson testified in favor of **SB 667** requesting an amendment to except the Pest Control Association which he stated is already regulated by the Kansas Department of Agriculture and the Environmental Protections Agency. (attachment 7) Following discussion the Committee determined the amendment unnecessary because only the chemicals under this act were being discussed and these did not apply to those the Pest Control Association uses.

Conferee Kraushaar testified in opposition to **SB 667**. He stated that this bill would require registration, reporting and recordkeeping for a number of regulated chemicals including nonprescription drugs. He discussed the restrictions the bill would place on three common drugs used in cold and allergy medicines, ephedrine, pseudoephedrine and phenylpropanolamine (PPA). He discussed the administrative “nightmare” the regulation of these drugs would cause for the Secretary of KDHE in terms of processing exemptions. He called methamphetamine (meth) production a “moving target” and described the ease with which the chemicals used in meth production can be obtained. He discussed the collaborative role of retail businesses in assisting to curtail the sale of cold or allergy medications in suspicious circumstances. (attachment 8)

The Chair stated that upon adjournment Senator Schraad’s subcommittee would meet to continue reviewing **SB 640** and **SB 667**.

The meeting adjourned at 11:00 a.m. The next scheduled meeting is Wednesday, February 25.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/24/98

NAME	REPRESENTING
B. Lynn Harrell	Judicial Council
DVD TRANT	KCCI
Kevin Kraushaar	Nonprescription Drug Mfg. Assoc.
Stacy Farmer	KASB
Bill Sneed	Merck
Barbara Belcher	Merck
Scott Knoer	KPhA
Paul Jones	KSC
Hal Hudson	KS Pest Control Assoc.
Walter Randall	Whitney Jamson, P.A.
GERALD HENDERSON	USA of KS
DeAnna Peter	Office of the Governor
Amy Bellis	KCSOV
Josanna Ineson Parks	Bethel College (N. Newton)
Brica Stucky	Bethel College N. Newton KS
Monica Meyer	Bethel college N. Newton, KS
Quinn Pritchard	SRS
David Albers	Atty. General
Steve Montgomery	Carter - Wallace

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Testimony on Senate Bill 641

February 24, 1998

Paul J. Morrison

As you know, K.S.A. 38-1507 was passed several years ago in an attempt to protect the confidentiality of police and SRS reports generated in child abuse and neglect cases. Obviously, these records many many times contain both victim statements as well as accounts of physical and sexual abuse that were best left outside of public perusal. Additionally, left unprotected, these reports oftentimes made their way into divorce and child custody proceedings. While the statute does allow for their use in some of those proceedings, it requires that the reports first be inspected privately by the judge to ensure their relevance. These protections are good law and have served us well over the years.

In recent years, however, law enforcement and SRS in certain areas have begun to use trained forensic interviewers to help investigate these cases. In Johnson and Wyandotte counties, for example, these interviewers work for a non-profit child advocacy organization known as Sunflower House, Inc. Sunflower House is a child advocacy center which is one of many that have sprung up across this county in the last few years. Sunflower House is the first child advocacy center in the State of Kansas. Unfortunately, K.S.A. 38-1507 arguably does not protect child abuse reports, including audio or video tapes, which are generated by organizations such as Sunflower House, Inc., at the request of SRS or law enforcement. While Sunflower House, Inc., does very little in terms of written reports, they do make audio and video tapes of all child interviews. As such, these video tapes have been subpoenaed in divorce cases. This change in legislation will ensure that these audio and video tapes, which are generated at the request of SRS and law enforcement, will be protected under Kansas law.



Paul J. Morrison

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Att 2

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MEMBER: ENERGY AND NATURAL
RESOURCES
FEDERAL AND STATE
AFFAIRS
SPECIAL CLAIMS AGAINST
THE STATE

SB 667 -- The Kansas Chemical Control Act

You need only look at this morning's newspaper to understand that methamphetamine is a very real and growing problem here in the Midwest (see *Kansas City Star*, 2/24/98, attachment #1).

Last September, the President's Commission on Model State Drug Laws traveled to Kansas to share strategies for dealing with our country's drug problem. During the presentation, the head of California's Bureau of Narcotic Enforcement commented, "...we told Kansans ten to fifteen years ago that gangs would be coming to the midwest, and they did. We're here to tell you that the methamphetamine problem will be even worse."

Methamphetamine is a synthetic stimulant drug that is cheaper than cocaine, produces a stronger high than cocaine, is highly addictive and can produce extreme aggressiveness and violence.

In addition, methamphetamine can be produced relatively easily (see attachment #2) and for substantial profit to its producer. A \$500 investment can produce drugs with a street value of over \$10,000.

Last year, neighboring Missouri ranked first in the nation in the number of new meth labs discovered – and Kansas ranks anywhere from 3rd to 9th based on different numbers.

The movement and growth of illegal methamphetamine across the country has shown that illegal drug producers will travel to those areas that permit easy access to source chemicals. And that's the purpose of the Kansas Chemical Control Act -- to serve as a preventative measure – seeking to stop illegal drug activity before it happens.

The key to successful implementation of the chemical control act is to balance valid business interests with the need to combat what may be the fastest law enforcement problem facing Kansas today.

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Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 667
FEBRUARY 24, 1998

Mr. Chairman and Members of the Committee:

We have an epidemic in Kansas. This plague is killing our citizens, maiming our children, poisoning our drinking water and endangering innocent citizens throughout the state. The disease is the manufacture of methamphetamine and it is threatening to overwhelm the state.

I have appeared before this committee for over 10 years representing the KBI, Attorney General's Office and various law enforcement organizations. I can truly say to you this is the most serious challenge facing Kansas law enforcement in the 17 years I have been involved in the criminal justice system.

Clandestine laboratories producing methamphetamine are a Hydra with many equally dangerous heads. There is extreme potential for fires, explosions, exposure to hazardous chemicals and fumes at a clandestine laboratory. Chemicals involved include: acetone, lye, acids, anhydrous ammonia and red phosphorus. The individuals involved are not only "not rocket scientists", they are not scientists. They have no concept of necessary precautions or safety measures. Numerous fires and explosions in Kansas have been the direct result of these

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clandestine laboratories. Children and neighbors have been burned and poisoned. Usually, these labs are located in residential areas and all too often there are children present who are exposed to these deadly fumes and explosive chemicals by their "loving" parents. To compound this problem, everything you need to manufacture methamphetamine can be purchased at a local Wal-Mart and Walgreens.

The resulting demands on law enforcement from this incredible number of labs is swamping state resources. As opposed to a single bag of marijuana or cocaine, a clandestine lab may have hundreds of pieces of evidence; unmarked chemicals, glassware, filters and other paraphernalia involved that need to be tested. This puts an incredible strain on laboratory facilities and as you are probably aware from the appropriations process, the KBI laboratory has inadequate resources and a growing backlog.

The federal government was so concerned that two years ago there was literally an act of Congress to create the Mid-America High Intensity Drug Trafficking Area (HIDTA) program under the Office of National Drug Control Policy (Drug Czar). I have included a brochure produced with those federal funds. HIDTA also funded two chemists for the KBI, a separate DEA lab in the Kansas City area, two additional prosecuting attorneys and other resources.

The KBI operates a clandestine laboratory response team with trained and equipped agents and chemists to respond when these laboratories are found. The hazardous chemicals makes it exceedingly dangerous for untrained officers without protective breathing gear and protective suits to even enter a house with such a lab.

After a cook has been completed, these hazardous chemicals are dumped on the ground, in street gutters or down waterlines, creating hazardous sites and polluting ground water.

Hazardous waste sites thus created fall to local cities and counties to clean up with the resulting tens of thousands of dollars in expenses.

One of the pharmacological aspects of the drugs is that it makes a person paranoid. Therefore, we not have only individuals who are illegally manufacturing a drug, operating in an underworld with rip-offs and competitors are armed and dangerous, and where law enforcement is constantly searching for them, but they are taking a mind-altering substance that makes them more paranoid than such a profession would normally require. Thus, we frequently find meth labs to be booby-trapped and meth dealers and cooks to be heavily armed.

The last time the KBI was involved in a fatality shooting, it was a meth cooker who had not only a fully automatic MAC-10 and a \$1,000 HK assault rifle, but drew a .44 revolver wherein he had hollowed out the bullets, filled them with mercury and then waxed them over to make even more devastating and poisonous wounds. This same individual had outstanding warrants in federal court for federal explosive violations in regard to his previous booby-trapping of cook sites.

Now that you have an appreciation for the dangerous involved in the clandestine lab, I can give you the really bad news. This is truly an epidemic. It is a disease that is spreading. In 1994, there were 4 clandestine labs seized in Kansas. In 1995, that number rose to 7. In 1996, it skyrocketed to 71, a hundredfold increase. In 1997, there were 99 clandestine labs seized in Kansas. We are third in the nation behind Missouri and California in clandestine lab activity.

As this committee is aware, we have been trying to take steps to respond to this growing threat. There is now a separate statute for dealing manufacturing and attempting to manufacture,

K.S.A. 65-4159, which makes it a level 2 drug felony to manufacture any controlled substance, and a level 1 if done within 1,000 feet of school property.

The principal ingredient in these clandestine labs from which they make meth is either ephedrine or pseudoephedrine. We have added ephedrine in its pure form to the drug schedules. However, the manufacturers have gotten around that by merely adding a placebo, such a coloring, so large shipments are still coming into Kansas. The Highway Patrol was involved in the seizure of a semi load of ephedrine three weeks ago. As evidenced by the massive growth and problem, current legislation is inadequate to deter or resolve the problem.

September 11, 1997, Attorney General Carla Stovall sponsored a conference on drug legislation. One of the key pieces of legislation addressed at that conference is now before you, SB 667, the Kansas Chemical Control Act produced by the National Alliance for Model State Drug Laws. This bill was drafted off the Model Chemical Control Act, which in turn was roughly based on the Oklahoma statute. As of April 1993, 18 states had chemical control statutes, and as you might have guessed, this is more common with those states which have a pronounced methamphetamine problem. California, is the leading state, but I would note that our neighboring states of Iowa, Oklahoma, Arkansas, Missouri and Colorado, also have similar legislation.

A brief background on the National Alliance for Model State Drug Laws. It began as the White House President's Commission on Model State Drug Laws, a bipartisan commission to develop state legislation in response to various drug problems. In Kansas, we have utilized their work previously to adopt our Money Laundering Act and as the basis for our Standard Asset Seizure and Forfeiture Act. I am aware Senator Petty has met with the Executive Director

and is familiar with some of the work done by the National Alliance. I have prepared a document which lists the sections of SB 667 with the comments from the Model Act. I also have available materials from the conference this summer addressing this issue. These explain the bill section by section. What I want the committee to understand is that this is not some novel or unworkable piece of legislation, but a well thought out approach which has worked and is working in at least 18 other states.

Essentially, the legislation takes the most commonly utilized chemicals in clandestine laboratories and sets up a regulation system for transactions involving those chemicals. Persons who are selling them need to be registered, must obtain a permit and provide photo identification. The primary purpose is to deter illegal acquisition for clandestine labs, but it does have a secondary value of providing substantial leads identifying those parties who are purchasing the chemicals involved in unusual amounts or with no apparent legitimate need.

There are numerous protections and exemptions for legitimate commerce within the act, see section 5, subsection (c)-(f), where common chemicals and medicines can be exempted out from coverage of the act. I realize there are costs involved in this proposal, i.e. the cost to administer it on the state; additional paperwork and problems for those manufacturers and purchasers of these chemicals. However, let me assure you that the benefits of this registration far outweigh those costs. We cannot ignore this epidemic. We must use every tool available to try and control this plague.

One more reason for passage of this act is what I will call the trickle down theory of methamphetamine manufacture. In the 80's in a drug raid in Cherryvale, Kansas, the DEA recovered a letter from an attorney in Texas. In that letter, the attorney advised his client which

states had the lowest penalties for manufacture of methamphetamine. At that time in Kansas, it was only a misdemeanor to manufacture methamphetamine and, not surprisingly, Kansas was highlighted in that letter. In short, this individual had hired legal counsel to research what state had the loosest, most lenient laws, and then moved his operation to Kansas to take advantage of those laws. Without strong laws, at least as strong as our neighboring states, the meth cookers with all their dangers will trickle into Kansas.

I referred to the manufacture of methamphetamine as an epidemic and disease at the beginning of my comments. That was an intentional analogy, because once we have a carrier in the state, other individuals involved in that manufacture learn the tricks, obtain their own recipes and then the infection spreads. A classical illustration of that is southeast Kansas, where probably 70% of our methamphetamine labs are found. If Kansas continues to leave the purchase of these chemicals unregulated, we will continue to attract methamphetamine manufacturers, not just from our own drug culture, but from around the United States.

That is exactly what happened in Utah, which found that it was quickly becoming a source state for clandestine chemicals and labs due to the influence of surrounding states such as California, Arizona and New Mexico, all of which had passed chemical control acts. Like Utah, this filth is trickling down on Kansas, as our surrounding states, with the exception of Nebraska, have already passed this type of legislation.

I realize this is a complicated issue and it is late in the session, but I would urge this committee to do all that it can to ensure passage of this act as quickly as possible. I would be happy to stand for any questions.

SENATE BILL No. 667

By Senator Schraad

2-13

9 AN ACT enacting the Kansas chemical control act.

10

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

12 Section 1. This act shall be known and may be cited as the "Kansas
13 chemical control act."

14 Sec. 2. The purpose of this act is to prevent the illegal diversion of
15 precursor chemicals by creating a monitoring system which traces a chem-
16 ical from its distribution to its use while protecting the transfer of chem-
17 icals for legitimate commercial uses.

18 Sec. 3. (a) The term "administer" means to apply a regulated chem-
19 ical whether by injection, inhalation, ingestion or any other means, di-
20 rectly to the body of a patient or research subject by: (1) A practitioner,
21 or in the practitioner's presence, by such practitioner's authorized agent;
22 or

23 (2) the patient or research subject at the direction and in the presence
24 of the practitioner.

25 (b) The term "agent or representative" means a person who is au-
26 thorized to receive, possess, manufacture or distribute or in any other
27 manner control or have access to a regulated chemical on behalf of an-
28 other person.

29 (c) The term "broker" or "trader" means a person who assists in ar-
30 ranging a transaction of a regulated chemical by negotiating contracts,
31 serving as an agent or intermediary or bringing a buyer, seller or trans-
32 porter, or any combination thereof, together.

33 (d) The term "controlled premises" means: (1) A place where regu-
34 lated chemical distributors or regulated chemical possessors are required
35 under this act to, or in fact, keep or maintain records related to regulated
36 chemical transactions; and

37 (2) a place, including a factory, warehouse, establishment and con-
38 veyance, in which regulated chemical distributors or regulated chemical
39 possessors are permitted under this act to, or in fact, possess, manufac-
40 ture, compound, process, sell, deliver or dispose of a regulated chemical.

41 (e) The term "delivers" or "delivery" means the actual, constructive
42 or attempted transfer of a regulated chemical from one person to another,
43 whether or not there is an agency relationship.

This section clarifies terminology or "terms of art" specific to this [Act]. Many of these terms are drawn from other model state statutes, federal acts, or state precursor legislation. Consistent use of definitions with well-established interpretations helps eliminate ambiguity and ensure uniformity of purpose and application. With this in mind, the definitions for "administer," "manufacture," and "practitioner" have been substantially taken from the Uniform Controlled Substances Act (UCSA). Necessary modifications ensure the applicability of these definitions to this [Act]. The phrase "regulated chemical" replaces, where appropriate, the phrase "controlled substance." The term "controlled premises" has been expanded to include locations where records and chemicals are in fact kept or maintained.

The complete definitions for the UCSA terms and phrases are included for two reasons. First, to allow full comprehension of the regulatory scheme contemplated by this Act. Second, to help provide a free-standing act which states can adopt separate and distinct from their controlled substances acts (CSAs). States which incorporate sections of this [Act] into their CSA may simply insert "or regulated chemical" and other necessary language into existing definitions.

Other borrowed phrases include "agent or representative," "manager," and "person." The first and second are contributions of California's chemical regulations while the third comes from the federal Racketeer Influenced and Corrupt Organizations Act (RICO). These definitions help identify the type of individuals subject to the [Act's] responsibilities and penalties.

States vary significantly in the number of chemicals they regulate, from 35 in Colorado to 9 in Montana. The differences reflect each state's experience with diversion, abuse, and the potential illicit use of a chemical. The regulated chemicals list in this [Act] includes a comprehensive range of chemicals controlled by states and the federal government. This affords a historical perspective to states with no controls and helps them reach informed decisions about which chemicals they should consider for regulation.

One notable inclusion is ephedrine. Many people recognize ephedrine as an ingredient in their sinus medications. However, the public is often unaware that ephedrine is a primary precursor used illegally to produce methamphetamine. Fifty-three percent (53%) of

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1 (f) The term "dispense" means to deliver a regulated chemical to an
 2 ultimate user, patient or research subject by, or pursuant to the lawful
 3 order of, a practitioner, including the prescribing, administering, pack-
 4 aging, labeling or compounding necessary to prepare the regulated chem-
 5 ical for that delivery.

6 (g) The term "distribute" means to deliver other than by administer-
 7 ing or dispensing a regulated chemical.

8 (h) The term "manager" means one who represents the interest of
 9 any owner, partner or corporate officer in the operation of a business
 10 involved in the manufacture, distribution or possession of regulated
 11 chemicals whose duties include, but are not limited to: (1) The making
 12 or changing of policy; (2) approving credit; (3) hiring or firing employees;
 13 or (4) generally exercising independent judgment in the operation of the
 14 business. Such person need not have a financial interest in the business.

15 (i) The term "manufacture" means to produce, prepare, propagate,
 16 compound, convert or process a regulated chemical directly or indirectly,
 17 by extraction from substances of natural origin, chemical synthesis or a
 18 combination of extraction and chemical synthesis, and may include pack-
 19 aging or repackaging of the substance or labeling or relabeling of its con-
 20 tainer. The term excludes the preparation, compounding, packaging, re-
 21 packaging, labeling or relabeling of a regulated chemical:

22 (1) By a practitioner as an incident to the practitioner's administering
 23 or dispensing of a regulated chemical in the course of the practitioner's
 24 professional practice; or

25 (2) by a practitioner, or by the practitioner's authorized agent under
 26 the practitioner's supervision, for the purpose of, or as an incident to
 27 research, teaching or chemical analysis and not for sale.

28 (j) The term "person" means any individual or entity capable of hold-
 29 ing a legal or beneficial interest in property.

30 (k) The term "practitioner" means a physician, dentist, veterinarian,
 31 scientific investigator, pharmacist, pharmacy, hospital or other person li-
 32 censed, registered or otherwise permitted, by the state, to distribute, dis-
 33 pense conduct research with respect to, administer or use in teaching or
 34 chemical analysis, a regulated chemical in the course of professional prac-
 35 tice or research.

36 (l) The term "regulated chemical" means a chemical that is used di-
 37 rectly or indirectly to manufacture a controlled substance or other regu-
 38 lated chemical in violation of the state controlled substances act or this
 39 act. The fact that a chemical may be used for a purpose other than the
 40 manufacturing of a controlled substance or regulated chemical does not
 41 exempt it from the provisions of this act. The term includes:

42 (1) Acetic anhydride.

43 (2) Anthranilic acid, its esters and its salts.

the clandestine methamphetamine labs seized by DEA
 in 1990 used the ephedrine reduction method.

State officials report a similar phenomenon. Illicit meth
 laboratories in the west and southwest began using
 ephedrine after state regulation of phenylacetic acid. In
 northern California 85% of these labs use single ingre-
 dient ephedrine tablets. Oregon officials discovered
 that over-the-counter ephedrine tablets sold in the Port-
 land area became a source of ephedrine for northwest
 methamphetamine lab operators. Ephedrine reduction's
 increasing popularity is due to its simplicity and a
 resulting product with pronounced effect on the user.
 The regulation of ephedrine is an important step
 towards curbing the clandestine manufacture of
 methamphetamine. It provides controlled access to the
 chemical and helps prevent distribution into illegiti-
 mate channels.

Another important step is the regulation of transactions
 involving any amount of a regulated chemical. This
 permits state and local officials to supplement federal
 enforcement efforts. Individuals dealing in below-
 threshold quantities are exempt from federal record-
 keeping, reporting, and inspection requirements. They
 accumulate large amounts of chemicals for clandestine
 production by engaging in multiple transactions below
 the threshold limits. Federal officials under current law
 have no way of regulating this behavior or even obtain-
 ing information about the transactions. The [Act] allows
 state and local officials to address this diversion which
 would otherwise escape detection until after illegal use
 of chemicals.

- 1 (3) Benzaldehyde.
- 2 (4) Benzyl chloride.
- 3 (5) Benzyl cyanide.
- 4 (6) D-lysergic acid.
- 5 (7) Diethylamine and its salts.
- 6 (8) Ephedrine, its salts, optical isomers and salts of optical isomers.
- 7 (9) Ethylamine and its salts.
- 8 (10) Ergotamine and its salts.
- 9 (11) Ergonovine and its salts.
- 10 (12) Hydriodic acid.
- 11 (13) Isosafrole.
- 12 (14) Malonic acid and its esters.
- 13 (15) 3, 4-methylenedioxyphenyl-2-propanone.
- 14 (16) Methylamine and its salts.
- 15 (17) Morpholine and its salts.
- 16 (18) N-acetylanthranilic acid, its esters and salts.
- 17 (19) N-ethylephedrine, its salts, optical isomers and sand salts of op-
- 18 tical isomers.
- 19 (20) N-ethylpseudoephedrine, its salts, optical isomers, and salts of
- 20 optical isomers.
- 21 (21) N-methylephedrine, its salts, optical isomers, and salts of optical
- 22 isomers.
- 23 (22) N-methylpseudoephedrine, its salts, optical isomers, and salts of
- 24 optical isomers.
- 25 (23) Nitroethane.
- 26 (24) Norpseudoephedrine, its salts, optical isomers, and salts of op-
- 27 tical isomers.
- 28 (25) 1-phenyl-1-choloro-2=/methylaminopropane (chloroephedrine;
- 29 chloropseudoephedrine), their salts, optical isomers, and salts of optical
- 30 isomers.
- 31 (26) Phenyl-2-propanone.
- 32 (27) Phenylacetic acid, its esters and salts.
- 33 (28) Phenylpropanolamine its salts, optical isomers, and salts of op-
- 34 tical isomers.
- 35 (29) Piperidine and its salts.
- 36 (30) Piperonal.
- 37 (31) Propronic anhdride.
- 38 (32) Pseudoephedrine, its salts, optical isomers, and salts of optical
- 39 isomers.
- 40 (33) Pyrrolidine and its salts.
- 41 (34) Safrole.
- 42 (35) Thionylchloride.
- 43 (m) The term "regulated chemical distributor" means any person,

1 whether or not the person is registered pursuant to the act, who manu-
2 factures or distributes a regulated chemical.

3 (n) The term "regulated chemical possessor" means any person who
4 possesses a regulated chemical.

5 (o) The term "regulated chemical transaction" means the manufac-
6 ture of a regulated chemical or the distribution of a regulated chemical
7 within, into, or out of the state.

8 (p) The term "secretary" means the secretary of health and environ-
9 ment.

10 Sec. 4. The provisions of this act shall not apply to: (a) A domestic
11 lawful distribution in the usual course of business between agents or em-
12 ployees of a single regulated distributor or regulated chemical possessor;

13 (b) a distribution of a regulated chemical to or by a common or con-
14 tract carrier for carriage in the lawful and usual course of the business of
15 the common or contract carrier, or to or by a warehouseman for storage
16 in the lawful and usual course of the business of the warehouseman;

17 (c) the administering or dispensing of a regulated chemical;

18 (d) the receipt of a regulated chemical pursuant to the lawful order
19 of a practitioner;

20 (e) the purchase, distribution or possession of a regulated chemical
21 by a local, state or federal law enforcement agency while in the discharge
22 of official duties unless the Kansas bureau of investigation properly no-
23 tifies the local law enforcement agency relying on the exclusion that its
24 investigatory activities are contrary to the public interest; or

25 (f) the purchase, distribution, manufacture, administering, dispensing
26 or possession of a drug product containing a regulated chemical if the
27 drug product has been granted an exemption pursuant to this section.

28 Sec. 5. (a) The secretary may, by rule or regulation, add chemicals
29 to or delete chemicals from the list of regulated chemicals in subsection
30 (1) of section 3. In determining whether to add or delete a chemical, the
31 secretary shall consider the following: (1) Whether the chemical is already
32 controlled under the uniform controlled substances act;

33 (2) the availability of the chemical for potential illegal diversion;

34 (3) the historical, actual, or potential use of the chemical in the illegal
35 production of a substance controlled under the uniform controlled sub-
36 stances act, including the scope, duration and significance of use;

37 (4) the nature and extent of the legitimate uses of the chemical;

38 (5) the clandestine and legitimate importation, manufacture, or dis-
39 tribution of the chemical; and

40 (6) any other factors relevant to and consistent with public health and
41 safety.

42 (b) Notwithstanding the requirements in subsection (a), the secretary
43 may by rule or regulation add a chemical to the list of regulated chemicals

4/ This section combines in one location for quick refer-
ence those transactions which are exempt from regula-
tions under this [Act]. Subsections (a)-(d) are a restate-
ment of the UCSA exemptions for common carriers,
agents, pharmacists, physicians and other authorized
practitioners. Subsection (e) is drawn from Texas' pre-
cursor regulations. In the normal course of their duties,
drug enforcement officials often purchase, distribute, or
possess regulated chemicals. This exemption allows
them to continue their investigations without being
subject to the requirements of this [Act]. Subsection (f)
reiterates the exemption for specific drug products
established in Subsection 6 (c)-(f).

Section 5 establishes a procedure for modifying the reg-
ulated chemicals list which is based on the UCSA
scheduling authority for controlled substances. Subsec-
tion (a) authorizes the appropriate state official to add
or delete chemicals from the list after consideration of
illegal diversion and use factors.

Subsection (b) permits the officials to list a chemical on
an emergency basis prior to completion of rulemaking
activity. Emergency regulation is sometimes necessary
to prevent an imminent hazard to public health and
safety. Some chemicals have flammable or toxic prop-
erties. Their uncontrolled use can lead to explosions,
environmental damage, and illness. However, precau-
tionary measures have been included to ensure appro-
priate use of the authority. The official must initiate
general regulatory proceedings under subsection (a)
before adoption of an emergency rule which has a
defined expiration date.

1 in subsection (l) of section 3 on a temporary basis to avoid an imminent
2 hazard to the public health and safety. With respect to the finding of an
3 imminent hazard, the secretary shall consider: (1) The recent history and
4 current pattern of abuse;

5 (2) the imminent risk to the public health; and

6 (3) available information on factors set forth in subsection (a).

7 An emergency rule may not be adopted until the secretary initiates a
8 rulemaking or other regulatory proceeding under subsection (a) with re-
9 spect to the chemical. Except as otherwise provided by law, or the sec-
10 retary provides otherwise, an emergency rule will expire on the later of:

11 (1) One year after its adoption; or

12 (2) the effective date of the final rule or other conclusion of the rule
13 making proceeding initiated under subsection (a).

14 (c) A manufacturer may apply to the secretary for an exemption of a
15 drug product containing a regulated chemical from the provisions of this
16 act on a form which the secretary shall furnish upon request. The sec-
17 retary shall grant the exemption upon finding that the applicant has shown
18 by a preponderance of the evidence that the drug product is manufac-
19 tured and distributed in a manner which prevents its illegal diversion. In
20 making the finding, the secretary shall consider: (1) Evidence of illegal
21 diversion of the drug product, including the scope, duration and signifi-
22 cance of the diversion;

23 (2) whether the drug product is formulated in such a way that it
24 cannot be easily used in the illegal production of a drug;

25 (3) whether the regulated chemical can be readily recovered from
26 the drug product;

27 (4) the manner of packaging the drug product, including the package
28 sizes;

29 (5) the manner of distribution and advertising of the drug product by
30 the manufacturer and others;

31 (6) any specific actions taken by the manufacturer to prevent illegal
32 diversion of the drug product; and

33 (7) any other factors which are relevant to and consistent with public
34 health and safety.

35 The secretary shall grant or deny an exemption by rule or regulation
36 in accordance with the Kansas administrative procedure act.

37 (d) (1) A drug product that is lawfully marketed in this state on the
38 effective date of this act and which is the subject of a request made under
39 subsection (c) shall be deemed in compliance with this act: (A) During
40 the pendency of the request; and

41 (B) for the 60 days after denial of the exemption, unless the denial
42 was based on a finding that the drug product is being illegally diverted.

43 (2) The manufacturer shall file a request under this subsection no

4-5

Subsections (c)-(f) are specially tailored to facilitate the continued use of regulated chemicals for medical purposes. The special exemption ensures manufacturers maintain access to a legal marketing process for legitimate drug products, such as Bronkaid and Primatene. An exemption finding requires consideration of a product's manufacture, packaging, advertising, distribution, and actual or potential illegal diversion. The exemption concept and determination factors are drawn from draft federal (Chemical Diversion and Trafficking Act) amendments negotiated between the DEA and chemical and drug manufacturers. Subsection (e) has been added to prevent abuse of the process through the bad faith filing of repeated applications.

1 later than 60 days from the effective date of this act.

2 (e) Applications pursuant to subsection (c) that involve a drug prod-
3 uct for which an exemption was previously denied may be made only if
4 there is a significant change in the data which led to the denial.

5 (f) The secretary may adopt rules and regulations to modify or re-
6 move an exemption upon finding: (1) That the drug product is being
7 illegally diverted; or

8 (2) that there is a significant change in the data which led to the
9 granting of the exemption.

10 In making a finding, the secretary shall consider the factors listed in
11 subsection (c).

12 (g) If any chemical is designated or deleted as a listed chemical under
13 the provisions of the federal controlled substances act, the secretary may
14 by rule or regulation similarly add or delete a chemical as a regulated
15 chemical without making the determination required under subsection
16 (a).

17 Sec. 6. (a) Except as provided in section 8, each regulated chemical
18 distributor shall apply annually for a registration from the secretary and
19 engage in a regulated chemical transaction only to the extent authorized
20 by the registration and in conformity with this act.

21 (b) The application shall be in such form and provide such informa-
22 tion as the secretary shall require by rule or regulation.

23 (c) The secretary shall register an applicant unless the secretary de-
24 termines that the registration shall be denied in accordance with subsec-
25 tion (a) of section 9.

26 (d) A separate registration is required for each principal place of busi-
27 ness or professional practice of the regulated chemical distributor.

28 (e) A regulated chemical distributor shall notify the secretary of any
29 change in business name, address, zip code, area code and telephone
30 number, or a change in managers, agent or representatives, no later than
31 the seventh calendar day after the change.

32 (f) A registration shall terminate if and when the regulated chemical
33 distributor dies, ceases legal existence, discontinues business or profes-
34 sional practice, or changes ownership.

35 (g) No registration shall be assigned or otherwise transferred except
36 upon such conditions as the secretary may specifically designate and then
37 only pursuant to the secretary's written consent.

38 Sec. 7. (a) Except as provided in section 8 and subsection (i), a per-
39 son shall obtain a permit to possess from the secretary each time the
40 person seeks to possess a regulated chemical. The person shall possess a
41 regulated chemical only to the extent authorized by the permit and in
42 conformity with this act.

43 (b) An individual applicant shall provide the following information on

9-7

Section ⁶7 draws upon the UCSA, federal controlled sub-
stances regulations, and California and Texas law for
the [Act's] registration procedure. Annual registration
serves dual purposes. First, it supplies information on
legitimate chemical sources, persons who can be held
accountable, locations, and available quantities. The
responsibility for the control of regulated chemicals
rests in large part with manufacturers and distributors.
To adequately assess the extent of illegal diversion, it is
critical to know the legal purpose for production and
distribution of chemicals. Officials can more accurately
determine if the source of chemicals found at clandes-
tine lab sites is legitimate, an unregulated channel, or
an "underground" process. Second, it emphasizes to
manufacturers and distributors the critical role they play
in eliminating unlawful chemical transfers.

The benefits of registration outweigh any anticipated
administrative costs. The number of manufacturers and
distributors who will submit applications is both finite
and manageable. California, for example, registers
approximately 40-45 companies per year. Section 16
authorizes assessment of fees to offset processing
expenses of those who do apply. The fees' purpose is to
prevent strain on scarce state resources, and not to prof-
it from the application process. Therefore, a fee cannot
exceed actual costs.

7. California law pioneered the permitting process which
has served as a model for many other state precursor
laws. Texas law expanded the process to require per-
mits for single or multiple purchases in addition to
transfers. Oklahoma law, the basis of this section, went
one step further. It extended the requirement beyond
purchases to possession of chemicals. This extension
allows regulation of every non-exempted use of a regu-
lated chemical.

1 an application furnished by the secretary: (1) Name, residential address
2 other than a post office box and telephone number;

3 (2) current and valid driver's license number or other current and
4 valid official state-issued identification number;

5 (3) social security number;

6 (4) date of birth;

7 (5) prior convictions, including those with an appeal pending, which
8 involve a felony violation of state or federal law, or the law of another
9 country, or a misdemeanor violation of this act or the controlled sub-
10 stances act;

11 (6) pending charges involving a felony violation of federal or state
12 law, or the law of another country, or a misdemeanor violation of this act
13 or the controlled substances act;

14 (7) the type and quantity of each regulated chemical to be possessed;

15 (8) a complete description of the intended uses of each chemical;

16 (9) the location where each chemical is to be stored and used;

17 (10) the intended date and method of delivery of each regulated
18 chemical;

19 (11) the intended method of disposal of any unused chemical or
20 chemical waste; and

21 (12) any additional information requested by the secretary relating to
22 possible grounds for denial as set forth in section 9.

23 (c) Each owner, partner, corporate officer or manager, and any agent
24 or representative of a business applicant shall provide the information
25 required in subsections (b)(1) through (b)(6) and (b)(12). An individual
26 making application on behalf of the business shall provide all the infor-
27 mation required in subsection (b) in addition to: (1) The individual's re-
28 lationship to the business;

29 (2) an affirmation that the individual is authorized to make applica-
30 tion on behalf of the business;

31 (3) the name, business address, other than a post office address and
32 business phone number of the individual's immediate supervisor;

33 (4) the name, address other than a post office address and telephone
34 number of the business; and

35 (5) the nature of the business and type of business ownership.

36 (d) The application shall be signed by the applicant under penalty of
37 perjury, or in the case of a business applicant, by the individual making
38 application on behalf of the business and, except as provided in subsection
39 (f), each owner, partner, corporate officer or manager, and any agent or
40 representative.

41 (e) An applicant for an initial permit shall submit with the application
42 two notarized sets of 10 print fingerprint cards. A business applicant is
43 required to submit cards for the individual making application on behalf

4-7
Many illegal "cookers" produce the necessary chemical in their clandestine laboratories and then manufacture the desired controlled substance. Because they do not purchase the chemical, they escape regulation and liability under a requirement applicable solely to purchases. A permit requirement for possession eliminates this loophole.

Section 8 is one more stage in the information cycle begun by regulated chemical distributors through the registration procedure. It looks at the receiving end. Permits identify persons who intend to possess specific quantities of chemicals for a stated purpose. Regulatory and enforcement officials can ascertain the fitness of a potential recipient and ensure the intended use is legitimate. This section facilitates the detection of possible diversion opportunities.

The inherent danger of some regulated chemicals, the potential for abuse, and limited lawful uses justifies the need to obtain the information listed in subsections (b) (c), and (e). Subsection (e) borrows California's requirement that fingerprint cards be submitted with an application. Verification of personal identification and criminal histories helps prevent the mistaken issuance of a permit due to a falsified application.

Persons subject to the disclosure requirements maintain sufficient personal access or control over chemicals to effect an illegal use or transfer. However, many publicly held corporations are sizeable enough so the owners and officers lack a personal relationship with the chemicals. There is no need for detailed background information or fingerprint cards from these people. Therefore, subsection (f) exempts them from the identification requirements.

1 of the business and, except as provided in subsection (f), for each owner,
2 partner, corporate officer or manager, and any agent or representative.

3 (f) An owner, partner, or corporate officer of a business applicant is
4 exempted from the requirements of subsection (c), (d), and (e) if the
5 business applicant is a publicly held corporation of 35 shareholders or
6 more.

7 (g) The secretary shall issue or deny a permit no later than 21 days
8 after receipt of the completed application, unless the secretary deter-
9 mines there is good cause for an extension. The secretary shall state in
10 writing the reasons for the extension and the new time period for issuance
11 or denial of the permit. The applicant shall have a right to appeal the
12 secretary's failure to act within the prescribed time period pursuant to
13 the administrative procedure act.

14 (h) The permit shall consist of five parts, including: (1) One copy to
15 be retained by the applicant;

16 (2) one copy to be retained by the secretary;

17 (3) one copy to be delivered to the regulated chemical distributor by
18 the applicant;

19 (4) one copy to be delivered to the Kansas bureau of investigation;
20 and

21 (5) one copy to be attached to the container of the regulated chem-
22 icals and to be kept with the chemicals at all times. In the case of multiple
23 containers related to a single permit, a label reflecting the permit number
24 shall be attached to each additional container.

25 (i) (1) A possessor may submit a comprehensive monthly report to
26 the secretary in lieu of the permit required by this section if the secretary
27 so authorizes upon finding in writing that: (A) The possessor is eligible
28 to apply for a permit;

29 (B) there are no grounds for denial of a permit pursuant to section
30 9; and

31 (C) (i) there is a regular relationship of supply and purchase between
32 a regulated chemical distributor and the regulated chemical possessor
33 with respect to the chemical; or

34 (ii) the regulated chemical possessor has established a record of use
35 of the chemical solely for a lawful purpose.

36 (2) The comprehensive monthly report shall be submitted no later
37 than 15 calendar days after the end of the calendar month which is the
38 subject of the report. It shall be submitted on a form which the secretary
39 shall provide, and shall include: (A) The quantity of the chemical pos-
40 sessed;

41 (B) the date and method of delivery of the chemical;

42 (C) the physical location where the chemical was stored and used;

43 (D) the use of the chemical;

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As subsection (f) illustrates, the extensive application process seeks to avoid undue interference with legitimate commerce. Subsection (i) provides a reporting alternative for possessors who demonstrate a history of regular, lawful use. The risk of illegal diversion associated with them is less than with other possessors. Their retrospective monthly submission of the necessary transaction information reasonably serves regulatory goals. It also prevents their unnecessary expenditure of time and money on permit applications. As with registration, a non-refundable application fee can offset actual processing costs.

Any related costs of a proactive regulatory scheme pale in comparison to the costs attendant to uncontrolled clandestine laboratories. As Section 15 discusses, the clean-up expense of clandestine labs is staggering, ranging in the millions of dollars. The cost of long-term environmental contamination remains unknown. This societal damage is compounded by millions of dollars in domestically produced illegal drugs which feed a thriving market.

In 1991 the California Bureau of Narcotics Enforcement (BNE) seized 1201 pounds of methamphetamine from 328 labs. The statewide average price for a pound of methamphetamine was \$8,000 - \$14,000. On the streets the product would have resulted in an average of \$9 - \$16 million in sales. The Oklahoma Bureau of Narcotics (OBN) seized approximately 482 pounds of methamphetamine that year. At approximately \$12,000 per pound, sales would have totalled over \$5 million. The toll in increased health, welfare and safety costs and human suffering is incalculable. These figures reflect only the actual product recovered from the labs. Many laboratories that are seized routinely contain no product but are capable of producing anywhere from ounce to multiple pound quantities.

A careful weighing of all pertinent costs favors adoption of a comprehensive chemical monitoring scheme.

1 (E) the method of disposal of any unused chemical or chemical waste;
2 and

3 (F) any other information required by the secretary.

4 (3) The possessor shall notify the secretary of any change in status
5 relevant to any grounds for suspension or revocation of a comprehensive
6 monthly report authorization no later than seven calendar days after the
7 change.

8 (4) The authorization shall consist of four parts and, in lieu of a per-
9 mit, be retained and delivered as provided in subsections (h)(1), (2), (3)
10 and (4).

11 (5) (A) The grounds for suspension or revocation of a permit under
12 section 9 shall constitute grounds for suspension or revocation of the
13 authorization.

14 (B) The secretary shall suspend or revoke an authorization to submit
15 a comprehensive monthly report in accordance with the procedures de-
16 scribed in subsections (c), (d) and (e) of section 10.

17 Sec. 8. (a) A person is ineligible to apply for a permit or registration
18 if the person: (1) Is an individual less than 18 years of age or a business
19 in which an individual under 18 years of age is in the capacity of owner,
20 partner, corporate officer, manager, agent or representative;

21 (2) has been convicted of a felony violation of federal or state law, or
22 the law of another country, or a federal or state misdemeanor violation
23 involving a controlled substance, controlled substance analog or a chem-
24 ical subject to regulation; or

25 (3) has had a federal or state registration, or a registration from an-
26 other country, to manufacture, distribute, dispense or possess controlled
27 substances or any chemical subject to regulation denied, suspended or
28 revoked.

29 (b) An applicant, registrant, or permit holder shall notify the secretary
30 of any change in status regarding the conditions listed in this section no
31 later than the seventh calendar day after the change.

32 Sec. 9. (a) The secretary may deny, suspend, or revoke a registration
33 or permit to possess upon finding that the applicant, registrant, or permit
34 holder:

35 (1) Has failed to make proper application to the secretary pursuant
36 to sections 6 and 7 and any applicable rule or regulation;

37 (2) has failed to demonstrate that the chemical will be used solely for
38 legitimate purposes;

39 (3) has violated any rule and regulation of the secretary or any pro-
40 vision of this act or the uniform controlled substances act;

41 (4) has failed, or does not demonstrate the ability, to maintain effec-
42 tive controls against diversion of regulated chemical into other than le-
43 gitimate medical, scientific, research or industrial channels;

Based on California law, this section precludes author-
ized access to regulated chemicals by unqualified or
unscrupulous persons. It is a common sense provision.
Individuals who have demonstrated previous illegal or
irresponsible behavior involving controlled substances
or chemicals should no longer be allowed control over
chemicals. Therefore, convicted offenders are ineligible
to apply for a permit or registration. The same is true
for persons who have had a prior registration or permit
denied, suspended, or revoked.

It is also important to exclude minors from positions of
total responsibility for chemicals. Drug dealers often
employ juveniles because juveniles are subject to less
harsh penalties than adults. A minor's ineligibility
therefore prevents drug dealers from using juveniles to
gain access to chemicals for illegal purposes.

This section's standards and procedures draw upon
those in the UCSA, federal CSA, California, Oklahoma,
and Texas law. The grounds for denial, suspension, or
revocation are taken from Sections 304 and 305 of the
UCSA and Section 824 of the federal CSA. The show
cause hearing in subsections (c) and (d) is patterned
after Oklahoma law which also draws upon the UCSA
and federal CSA. Subsection (e) is intended to facilitate
enforcement of the [Act]. It requires inter-agency infor-
mation sharing when the revoking or suspending
authority is not the state drug enforcement agency.

Subsection (b)'s requirement for prompt notice of a
change in conditions is a California and Texas addition.
It parallels similar requirements in the registration, per-
mit, and application ineligibility sections. Maintenance
of updated information is critical to achieving the [Act's]
purpose. It helps officials prevent an unfit person from
having unlimited access to a regulated chemical for an
indefinite period of time.

1 (5) has materially falsified or omitted material information from any
 2 application, record, report, inventory or other document required to be
 3 kept or filed under this act or any applicable rule and regulation; or

4 (6) has committed such acts as would render the person's registration
 5 or permit inconsistent with the public interest as determined by the sec-
 6 retary.

7 (b) An applicant, registrant, or permit holder shall notify the secretary
 8 of any change in status regarding the conditions listed in subsection (a)
 9 no later than the seventh calendar day after the change.

10 (c) Before denying, suspending, or revoking a registration or permit
 11 under subsection (a), the secretary shall cause to be served upon the
 12 applicant, registrant or permit holder an order to show cause why a reg-
 13 istration or permit should not be denied, suspended or revoked. The
 14 order to show cause shall contain a statement of its basis and shall call
 15 upon the applicant, registrant or permit holder to appear before the ap-
 16 propriate person or agency at the time and place within 30 days after the
 17 date of service of the order. The proceedings shall be conducted in ac-
 18 cordance with the Kansas administrative procedure act without regard to
 19 any criminal prosecution or other proceeding. An applicant, registrant or
 20 permit holder shall have a right to appeal an adverse decision pursuant
 21 to the Kansas administrative procedure act.

22 (d) The secretary shall suspend, without an order to show cause, any
 23 registration or permit simultaneously with the institution of proceedings
 24 described in subsection (a) if the secretary finds there is imminent danger
 25 to the public health or safety. The suspension shall continue in effect until
 26 the conclusion of the proceedings, including review thereof, unless with-
 27 drawn by the secretary or dissolved by a court of competent jurisdiction.

28 (e) The secretary shall promptly provide the Kansas bureau of inves-
 29 tigation the name, address and phone number of any individual whose
 30 registration or permit has been denied, suspended or revoked under this
 31 section.

32 Sec. 10. (a) Each regulated chemical distributor shall obtain, and
 33 each purchaser shall present the following identification prior to receipt
 34 or distribution of any regulated chemical: (1) The registration number,
 35 or permit, or monthly report authorization of the purchaser;

36 (2) a current and valid driver's license or other current and valid of-
 37 ficial state issued identification containing a photograph of the individual
 38 purchaser or individual receiving the regulated chemical on behalf of a
 39 business, and the purchaser's or recipient's residential or mailing address
 40 other than a post office box; and

41 (3) the motor vehicle license and vehicle identification number of the
 42 motor vehicle used in the regulated chemical transaction.

43 (b) A regulated chemical possessor authorized to submit a monthly

State officials for years have confronted a recurring problem with the monitoring of chemicals. In California individuals were using multiple identities and vehicles to conduct numerous transactions at various locations throughout the state. The evasive tactic hampered officials' ability to trace the path of a chemical. Determining the actual purchaser was difficult and at times impossible. In response, California drafted purchaser identification requirements which several state statutes and this [Act] incorporate.

1 report pursuant to subsection (i) of section 7 may designate an individual
2 to receive the regulated chemical on the possessor's behalf for purposes
3 of subsection (a).

4 Sec. 11. (a) Each regulated chemical distributor and regulated chemical
5 possessor: (1) Shall prepare annually a complete, legible and accurate
6 physical count of all regulated chemicals on hand. The physical count
7 shall be prepared on the effective date of this act and every year thereafter
8 or, if authorized by the secretary, on the annual general physical inventory
9 date of a regulated chemical distributor or regulated chemical possessor;

10 (2) shall include on the record of each physical count, the date it was
11 conducted, whether the count was taken as of the opening or as of the
12 closing of business on that day, the name of the preparer and any other
13 information which the secretary may require by rule and regulation. The
14 record shall be maintained for four years after the date of the count.

15 (b) Each regulated chemical distributor and regulated chemical possessor shall keep a record of each regulated chemical transaction in which it engages for four years after the date of the transaction.

16 (c) A record required under subsection (b): (1) Shall be kept in a
17 readily retrievable manner and shall include:

18 (A) The date of the regulated chemical transaction;

19 (B) the identity of each party to the transaction;

20 (C) the description and license number of any vehicle used during
21 the transaction;

22 (D) a statement of the quantity and form of the regulated chemical;

23 (E) the permit issued for the transaction; and

24 (F) a description of the method of transfer; and

25 (2) shall be available for inspection and copying as authorized under
26 section 16.

27 Sec. 12. (a) Each regulated chemical distributor and regulated chemical
28 possessor shall report to the secretary: (1) Any regulated chemical
29 transaction involving an unusual quantity of a regulated chemical;

30 (2) a method of payment involving \$99 or more in cash, currency or
31 money orders;

32 (3) any loss, spillage, breakage or theft of a regulated chemical or
33 breakage of a container in which a regulated chemical is stored;

34 (4) any discrepancy between the quantity of regulated chemicals
35 shipped and received;

36 (5) any regulated chemical transaction involving circumstances which
37 would indicate to a reasonable person that a regulated chemical might be
38 used or disposed of in violation of this act or the controlled substances
39 act, or applicable laws or regulations of the environmental protection
40 agency; or

41 (6) any other regulated chemical transaction required to be reported
42
43

This section facilitates the timely and routine monitoring of regulated chemicals. Complementing reporting requirements in Section 13, it helps document the actual distribution and possession of chemicals.

Section 13 requires submission of two types of reports. The first, under subsection (a), identifies suspicious transactions or circumstances which alert officials to potential illegal diversion, including unusual quantities of chemicals. "Unusual" refers to an amount outside the range of amounts normally acquired in the regular course of business for a particular distributor or possessor. The second, under subsections (c) and (d), provides retrospective monthly information about all regulated chemical transactions.

Federal and state reporting systems often overlap regarding specific information which persons submit. Subsection (f) prevents unnecessary duplication by accepting copies of federal reports containing the required information.

This section provides the logical follow-up to information obtained through the registration and permit process. Sections 7 and 8 provide a picture of the potential flow of chemicals throughout a state. Section 10 helps trace the actual flow of chemicals. It supplies essential details about the customers of chemical manufacturers and distributors. Officials can identify the true purchaser, ensure the intended use of chemicals is the real use, and address violations of the [Act].

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1 by the secretary as necessary to protect public health and safety.

2 (b) Submission of the report required by subsection (a) shall be at
3 the earliest practicable opportunity and no later than three calendar days
4 after any occurrence listed in subsection (a).

5 (c) Each regulated chemical distributor shall report to the secretary
6 all distributions of regulated chemicals in which the distributor has en-
7 gaged during a calendar month no later than 15 calendar days after the
8 end of the month.

9 (d) Each broker or trader shall report to the secretary all regulated
10 chemical transactions which the broker or trader has helped arrange dur-
11 ing a calendar month no later than 15 calendar days after the end of the
12 month.

13 (e) The secretary may supply a common form or format for submis-
14 sion of the reports required in subsections (a), (c) and (d).

15 (f) A regulated chemical distributor and regulated chemical possessor
16 may satisfy the requirements of any subsection of this act for transactions
17 involving threshold amounts of regulated chemicals under federal law by
18 submitting to the secretary copies of reports filed pursuant to federal law
19 which contain all of the information required by that subsection.

20 Sec. 13. (a) It is unlawful for a regulated chemical distributor to:

21 (1) Fail to obtain proper identification as required by section 10;

22 (2) engage in a regulated chemical transaction without a registration
23 issued under section 6 or in a manner not authorized by the registration;

24 (3) use a registration number which is altered, fictitious, revoked,
25 suspended or issued to another regulated chemical distributor;

26 (4) engage in a regulated chemical transaction with knowledge or
27 intent that a regulated chemical will be used in violation of this act or the
28 controlled substances act;

29 (5) engage in a regulated chemical transaction in violation of a rule
30 and regulation of the secretary.

31 (b) It is unlawful for any person to: (1) Possess a regulated chemical
32 without a permit or authorization in lieu of a permit issued under section
33 8 or in a manner not authorized by the permit or authorization;

34 (2) acquire or obtain, or attempt to acquire or obtain, possession of
35 a regulated chemical by material misrepresentation, fraud or deception;

36 (3) knowingly acquire or obtain, or attempt to acquire or obtain, pos-
37 session of a regulated chemical from anyone other than a regulated chem-
38 ical distributor properly registered under section 7;

39 (4) possess a regulated chemical with knowledge or intent that the
40 chemical will be used in violation of this act or the uniform controlled
41 substances act;

42 (5) possess a regulated chemical with no attached permit or label as
43 required by section 7; or

This section establishes a standard penalty provision based upon the legal obligations imposed under this [Act]. Despite the diversity of state penalty schemes, commonly found categorizations of offenses exist and are reflected in Section 14. Subsections (a) and (b) list offenses according to category of offender. Subsections (c) and (d) divide offenses according to degree of seriousness, felony or misdemeanor. Subsection (g) authorizes additional civil corporate fines. Each state must necessarily tailor Section 14 to fit its own unique sentencing structure. The purpose of this model provision is to give insight into practitioners' views about the types of actions or omissions which constitute violations and their relative gravity.

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- 1 (6) remove, alter, or obliterate any attached permit or label required
 2 by section 7;
- 3 (7) move or distribute a regulated chemical to, or store or possess a
 4 regulated chemical at, a location other than that identified in the permit
 5 or authorization issued under section 7;
- 6 (8) fail to present, or to present false or fraudulent identification
 7 when identification is required by section 10;
- 8 (9) knowingly or intentionally furnish false or fraudulent material in-
 9 formation in, or omit any material information from, any application, re-
 10 port, record, inventory or other document required to be kept or filed
 11 under this act or any applicable rule and regulation;
- 12 (10) fail to attach a permit or label as required by section 7;
- 13 (11) possess a regulated chemical in violation of a rule and regulation
 14 of the secretary;
- 15 (12) refuse or fail to make, keep, submit or furnish an application,
 16 record, report, inventory, notification or other information required un-
 17 der this act or any applicable rule and regulation; or
- 18 (13) refuse entry into controlled premises for any inspection author-
 19 ized by section 7 or 8.
- 20 (c) A person who commits an offense described in subsections (a)(1)
 21 through (4) and (b)(1) through (9) is guilty of a severity level 9, nonperson
 22 felony.
- 23 (d) A person who commits an offense described in subsections (a)(5)
 24 and (b)(10) through (13) is guilty of a class B nonperson misdemeanor.
- 25 (e) In addition to any other penalty imposed, a corporation which
 26 commits an offense described in this section shall be subject to a civil fine
 27 of not more than \$20,000.
- 28 Sec. 14. (a) In addition to any fine or imprisonment imposed under
 29 section 13 of this act, the following civil assessment shall be imposed:
- 30 (1) Ten thousand dollars for each violation described in subsections
 31 (a)(5) and (b)(10) through (13) or the actual cleanup costs of illegal lab-
 32 oratory sites, whichever is greater; and
- 33 (2) One hundred thousand dollars for each violation described in sub-
 34 subsections (a)(1) through (4) and (b)(1) through (9) or the actual cleanup
 35 costs of illegal laboratory sites, whichever is greater.
- 36 (b) The assessment provided for in this section shall be collected as
 37 provided for the collection of other civil assessments and judgments.
- 38 (c) All moneys collected under this section shall be deposited to the
 39 credit of the chemical control fund and used for the enforcement of this
 40 act and the cleanup of illegal laboratory sites.
- 41 (d) Moneys from the fund shall not supplant any other local, state or
 42 federal funds.
- 43 Sec. 15. (a) The secretary is authorized to conduct any investigation

This section establishes a civil remedy which serves dual purposes. First, it helps pay for cleaning up clandestine lab sites. Seizures often reveal significant hazardous or toxic waste or by-products. Clean-up costs are staggering as California officials have experienced firsthand. For several years California has paid over \$1,000,000 each year for illegal lab clean-up costs. Smaller states as well feel the monetary pinch. Last year

Oklahoma expended approximately \$6,000 to clean-up illegal labs. This expense is only the cost to remove bulk contamination. Site restoration through hazardous waste removal and mitigation measures consumes enormous amounts of financial resources. Consequently, it is difficult for states to address long-term environmental contamination. A civil assessment helps stop violators from escaping financial liability for potential health and environmental hazards.

Second, the civil remedy helps recover costs for the enforcement and prosecution of cases pursuant to this [Act]. Clandestine lab cases are not cost effective because of the expense to clean-up hazardous waste and deal with residual contamination. A civil assessment allows states to pursue illegal lab operators without creating additional resource allocation problems.

This section authorizes investigative and administrative powers which help effectuate the chemical tracking system. Subsections (a) and (c) grant typical fact-finding and rulemaking authority possessed by regulatory agencies. To ensure proper use of acquired information, subsection (b) creates a confidentiality provision which is drawn from the Model Asset Seizure and Forfeiture Act (MASFA). Finally, subsection (c) plays an important role in maintaining fiscal soundness of the regulatory scheme. A system of non-refundable fees helps offset the state's administrative expense of monitoring chemical transactions.

1 necessary to determine compliance with this act, and in accordance with
 2 the Kansas administrative procedure act may subpoena witnesses, compel
 3 their attendance and testimony, and require the production of document-
 4 tary evidence relevant to the investigation. The secretary may invoke the
 5 aid of the district court in the jurisdiction of which the investigation is
 6 carried on, or in which the subpoenaed person resides, carries on busi-
 7 ness, or may be found, to compel compliance with the subpoena.

8 (b) Except as otherwise provided, no documentary material, tran-
 9 scripts, oral testimony or copies in the possession of the secretary shall
 10 be available prior to the filing of a criminal proceeding for examination
 11 by any individual other than the secretary, the secretary's designee, or a
 12 local, state or federal law enforcement officer without the consent of the
 13 person who produced the material or transcripts.

14 (c) The secretary is authorized to adopt rules and regulations, and to
 15 charge reasonable and non-refundable registration, permit, and monthly
 16 report authorization fees, which the secretary deems necessary and ap-
 17 propriate for the efficient and effective implementation of this act. All
 18 nonrefundable fees shall be used for and shall not exceed actual process-
 19 ing costs.

20 Sec. 16. (a) The secretary, the secretary's designee, or a local, state
 21 or federal officer empowered by law to conduct investigations of or to
 22 make arrests for drug law offenses is authorized to conduct administrative
 23 inspections of controlled premises in accordance with the requirements
 24 of this section.

25 (b) The secretary's designee, or any law enforcement officer, may
 26 inspect controlled premises after making a demand to conduct an in-
 27 spection and presenting appropriate credentials to any person identified
 28 in an application submitted under section 6 or 7, or if no such person is
 29 present or readily available, to any person present at the controlled prem-
 30 ises.

31 (c) The demand for inspection must be made and the inspection con-
 32 ducted during regular and usual business hours. The inspection may in-
 33 clude: (1) Inventorying any stock of any regulated chemical and obtaining
 34 samples;

35 (2) copying records required by this act to be, or in fact, kept; and

36 (3) inspecting, within reasonable limits and in a reasonable manner,
 37 all pertinent equipment, apparatus, finished and unfinished material, con-
 38 tainers and labeling found thereon, and all other things which help de-
 39 termine compliance with the act including records, files, papers, proc-
 40 esses, controls and facilities.

41 Sec. 17. (a) In addition to procedures provided in section 16 and
 42 subsection (e), a district court judge or magistrate within the judge's or
 43 magistrate's jurisdiction, and upon proper oath or affirmation showing

of persons who are subject to this [Act]. Administrative inspections allow routine and unimpeded review of inventories, storage facilities, records, papers, files, and equipment. They are important means of identifying noncompliance with the [Act].

Section 17 authorizes warrantless inspections in accordance with the Supreme Court's holding in *New York v. Burger*, 107 S. Ct. 2636 (1987). Burger involved a junkyard owner's business which partly consisted of dismantling automobiles and selling their parts. Pursuant to a New York statute allowing warrantless inspections of junkyards, police inspected the owner's premises and found stolen vehicles and parts. The owner was subsequently charged with possession of stolen property and unregistered operation as a vehicle dismantler.

The Supreme Court held the inspection was a constitutionally reasonable exception to the warrant requirement for closely regulated businesses. The New York regulatory structure satisfied three criteria. First, New York had a substantial governmental interest in eradicating auto theft, a problem which is associated with the junkyard industry. Second, warrantless administrative inspections necessarily further the regulatory goal. Frequent and unannounced inspections are crucial to preventing junkyards from becoming markets for stolen vehicles and parts. Third, the statute supplies a constitutionally adequate substitute for a warrant. It informs the business operator that regular inspections will be made and discusses the limited scope and authority of the inspectors.

Chemical regulation is a relatively new area of government oversight. However, it too qualifies as a closely regulated industry. Illegal diversion of chemicals surfaced as a national problem in the 1980s. Since its widespread recognition, federal and state officials have sought and obtained tight regulatory controls over chemicals. Moreover, chemical regulation is closely related to state regulation of scheduled substances which has existed federally and in every state since the early 1970s.

This [Act's] regulatory system also satisfies the Burger criteria. First, a state has a substantial governmental interest in preventing the transfer of chemicals to the illegal production of drugs. Controlling access to and monitoring the flow of chemicals serves that interest. Second, warrantless inspections are necessary to further the regulatory scheme. Advance notice provides dis-

tributors and possessors time to falsify records and conceal or modify inventories. This defeats the [Act's] purpose of ensuring the legitimate distribution, possession, and use of chemicals. Third, the [Act] provides a constitutionally adequate substitute for a warrant. Section 17 clearly informs persons that periodic inspections will be conducted in accordance with specific requirements. Additionally, the section limits the inspectors' discretion in time, place, and scope. Subsection (a) permits the inspection only by appropriate officials. Subsection (b) limits and carefully defines the activities of the inspectors, and subsection (c) permits the inspection only during normal business hours.

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1 probably cause, may issue warrants to conduct administrative inspections
2 and seize property as authorized by this act. For the purpose of issuance
3 of an administrative inspection warrant, probable cause exists upon a
4 showing of a valid public interest in the effective enforcement of this act,
5 or rules adopted under this act, sufficient to justify administrative in-
6 spection of the area, premises, building or conveyance in the circum-
7 stances specified in the application for the warrant.

8 (b) A warrant shall be issued only upon an affidavit of the secretary,
9 the secretary's designee, or an officer, sworn to before the judge or mag-
10 istrate, and establishing grounds for issuing the warrant. If the judge or
11 magistrate is satisfied that grounds for the application exist or that there
12 is probable cause to believe they exist, the judge or magistrate shall issue
13 a warrant identifying the area, the conveyance, the building or other
14 premises to be inspected, the purpose of the inspection, and, if appro-
15 priate, the type of property to be inspected, if any.

16 (c) The warrant shall: (1) State the grounds for its issuance and the
17 name of the affiant;

18 (2) be directed to a person authorized by this section to serve and
19 execute the warrant;

20 (3) command the person to whom it is directed to inspect the area,
21 conveyance, building or other premises identified for the purpose spec-
22 ified and, if appropriate, direct the seizure of the property specified;

23 (4) identify the items or types of property to be seized, if any;

24 (5) allow the sale or destruction of regulated chemicals or equipment
25 if appropriate and the deposit of the proceeds of any sale with the court;
26 and

27 (6) direct that the warrant be served during normal business hours
28 or other hours designated by the magistrate and designate the magistrate
29 to whom it shall be returned.

30 (d) A warrant issued pursuant to this section must be served and
31 returned within four days of its date of issue unless, upon a showing of a
32 need for additional time, the judge or magistrate orders otherwise. If
33 property is seized pursuant to a warrant, a copy of the warrant shall be
34 given to the person from whom or from whose premises the property is
35 taken, together with a receipt for the property taken, or the copy and
36 receipt shall be left at the place from which the property was taken. The
37 return of the warrant shall be made promptly, accompanied by a written
38 inventory of any property taken. The inventory shall be made in the pres-
39 ence of the person serving the warrant and of the person from whose
40 possession or premises the property was taken, if present, or in the pres-
41 ence of at least one credible person other than the person serving the
42 warrant. A copy of the inventory shall be delivered to the person from
43 whom or from whose premises the property was taken and to the appli-

This section establishes a procedure for issuance and execution of administrative inspection warrants in circumstances outside Section 17's scope. For example, a warrant would be required to conduct an inspection during nonemergency times other than normal business operating hours.

The specific language is substantially drawn from Section 502 of the UCSA. The described procedure incorporates the traditional warrant requirements in several states controlled substances acts.

1 cant for the warrant.

2 (e) This section does not prevent warrantless entries and administra-
3 tive inspections, including seizures of property, during times other than
4 normal business operating hours: (1) In situations presenting imminent
5 danger to health or safety; or

6 (2) in an emergency or other exigent circumstance where time or
7 opportunity to apply for a warrant is lacking.

8 Sec. 18. (a) All regulated chemicals which have been or are intended
9 to be manufactured, provided, sold, furnished, transferred, delivered, or
10 possessed in violation of this act shall be deemed contraband, and shall
11 be seized and summarily forfeited to the state.

12 (b) A violation of this act shall constitute conduct giving rise to for-
13 feiture pursuant to the Kansas standard asset forfeiture act, K.S.A. 60-
14 4101 *et seq.* and amendments thereto.

15 Sec. 19. If any provisions of this act or its application to any person
16 or circumstances are held invalid, the invalidity does not affect other
17 provisions or applications of this act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are severable.

20 Sec. 20. This act shall take effect and be in force from and after its
21 publication in the statute book.

Forfeiture is a potent weapon designed to attack the economic base of criminal activity. It removes equipment, buildings, monies and other property from the cycle of continued illegal use. Subsection (b) applies this remedy through existing state procedures. States may choose to eliminate subsection (a) and include regulated chemicals in the list of property subject to forfeiture under a state drug forfeiture statute.

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State Chemical Control Statutes

	AL	AZ	AR	CA	CO	HI	IA	LA	MN	MO	MT	NM	OK	OR	PA	TX	UT	WA
Number of Chemicals	17	19	20	32	35	31	12	18	31	20	9	26	20	17	32	16	31	23
Forfeiture of Chemicals	X		X	X		X				X		X					X	
EXCLUDED DRUGS																		
Prescription Drugs	X		X		X					X		X	X			X		X
Over-the-counter Drugs	X		X	●	X	●	○●		●	X ¹		X	X	⊕	X	X	● ²	X ³
LICENSE																		
Annual Renewal	X		X	X	X	X	X			X		X	X			X	X ³	X
Reasonable Fee	X		Max. \$25	Max. Costs	X	Max. Costs	Max. Costs	X		X		Min. \$250	\$100/ \$10 ⁴				X	Max. Costs
LICENSE/REPORTING EXEMPTIONS																		
Medical Professionals	X	X	X	X	X	X	X		X	X	X	X		X	X		X ⁵	X
Licensed Entities & Agents	X	X	X	X	X	X	X		X	X	X	X	Comm. carrier	X ⁶	X			X
College Chemistry Students			X		X							X	X					
Employees of Govt. Agencies			X		X													
Licensed Researchers			X		X							X						
REV./SUSP./DENIAL																		
Drug Conviction or Guilty Plea	X		X		X			X		X		X	X					
Rev./Susp. of Federal Registration	X		X		X			X		X		X						
Violation of Drug Law	X		X	X			X	X		X		X						X
License Obtained by Fraud	X		X	X	X		X	X		X		X	X ⁷					X

This chart was prepared by the American Prosecutors Research Institute's National Drug Prosecution Center under a grant from the National Institute of Justice.

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Survey information current through April 10, 1993

LEGEND:

Drugs Specifically Exempted: ●=Ephedrine, Pseudoephedrine, Norpseudoephedrine and Phenylpropanolamine ○=Cosmetics ⊕=Ephedrine

- 1 Also excludes sales or transfers below threshold level and drugs lawfully sold in ordinary course of business.
- 2 Also exempts dietary supplement, vitamins, minerals, herbs containing naturally occurring amount of chemicals.
- 3 Requires renewal in odd numbered years.
- 4 License to sell/permit to possess.
- 5 Applies to practitioners holding a substance license and registration from DEA.
- 6 Also exempts patients and persons reporting in an alternative manner.
- 7 Failure to maintain effective controls is also a reason for rev./susp./denial.

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State Chemical Control Statutes

	AL	AZ	AR	CA	CO	HI	IA	LA	MN	MO	MT	NM	OK	OR	PA	TX	UT	WA
RECORDS/REPORTS																		
Years Records Must Be Kept	2		2		2			2	5					2		2		
Common Form	X	X			X	X	X	X			X			X		X		X
Required Delivery Notice (Days Before/After Delivery)		21	21	21/3	21	21	21	21	21	21	/3			3/10		21	3 ⁹	21
Monthly Report Alternative		X	X ¹⁰	X	X	X	X	X	X	X	X ¹⁰		X ¹¹	X ¹⁰		X		X
Days to Report Difference in Quan. Shipped vs. Received	3	3	3		3		7	3			3			3		3		7
Purchase Out of State Report		X	X	X	X	X	X	X						X		X	X ¹²	X
Days to Report Theft/Loss	3 ¹³	3	3		3	3	7	3			3		3 ¹³	3		3	X ¹⁴	7
Records for Chemical Lab Apparatus																X		
Confidentiality of Records						X				X					15			
PURCHASER I.D.																		
Photo I.D.	X		X	X	X	X	X	X	X	X			X		X	X	X ¹⁶	X
Driver's License/I.D. #	X		X	X	X			X					X		X	X		
Birthdate	X		X		X			X					X			X		
Street/Resid. Mailing Addr.	X		X	X	X	X	X	X	X	X			X		X	X		X
Vehicle Lic. #, Year, State	X		X	X	X	X	X	X	X	X					X	X		X
Description of Use of Drugs	X ¹⁸		X	X	X	X	X	X	17	X			X ¹⁸		X ¹⁹	X		X
Signature			X	X	X	X	X	X	X	X					X	X		X
Business Authorization Letter	20		X	X	X	X	X	X	X	X					X	X		X
REGULATORY AGENCY																		
Subpoena Powers	▲	■	◆+	▷	+▲	■	▲	■	▷	+	▷	▲	☆	◇	+	■	*	▲

LEGEND:

Two symbols included within same cell indicates that the agencies share the regulatory duties ■=Dept. of Public Safety †=Dept. of Health
 ▲=Board of Pharmacy ☆=Bureau of Narcotics & Drugs ◆=Dept. of Police ▷=Dept. of Justice *=Dept. of Commerce

- ⁹ Applies only to extraordinary or unusual transaction.
- ¹⁰ Requires both lawful record of use and supply pattern.
- ¹¹ Requires only lawful record of use.
- ¹² Also applies to selling out-of-state.
- ¹³ Also requires 3 day notice for disposal of drug.
- ¹⁴ No days specified.
- ¹⁵ Penalty for wrongful use.
- ¹⁶ Identification required but specifics left to regulation.
- ¹⁷ Requires type, qty., method of delivery.
- ¹⁸ Requires also location where stored & used.
- ¹⁹ Requires also qty., price, manner of payment, date, time, location.
- ²⁰ No letter, but applicant must disclose relationship to business.

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Mitchell
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4/98

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

February 23, 1998

The Honorable Keith Schraad
State Senator
State House -Room 136 N
Topeka KS 66612

Dear Senator Schraad:

Senate Bill 667, the Kansas Chemical Control Act, is aimed at a wide variety of materials which can and are used in the manufacture of illegal drugs in addition to their widespread legitimate uses in manufacturing and business across the state. The control of these precursor chemicals is a means to limit or eliminate their availability to clandestine laboratories. The bill creates the legal framework for a regulatory program which will register distributors and possessors of these materials. The bill also contains civil and criminal penalties for violations. As drafted the bill places this program with the Department of Health and Environment.

I recommend a thorough examination of the concepts and details contained in Senate Bill 667. A number of questions should be asked. What potential impacts does this bill have on business and industry in the state? What successes and failures have occurred in similar programs in other states? What if any federal programs are in place? What resources are required to implement the provisions of this bill? Who will bear the cost of these resources? At present, we are not able to answer these questions and many additional questions which may arise. In fact, there is a legitimate question over the appropriate agency to implement this bill if passed. Implementation and enforcement appear to be aligned more directly with the mission of law enforcement agencies such as the Kansas Bureau of Investigation than with the public health mission of this agency.

The Honorable Keith Schraad

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February 23, 1998

The concepts in Senate Bill 667 are worthy of a deliberate and thoughtful review and perhaps adoption into law. Due to the complexity of the issue and the question of the appropriate agency, I recommend the committee consider a request to examine this issue in an interim committee. This agency is available to assist the committee in the examination of this issue.

Sincerely,



Gary R. Mitchell
Secretary

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**Testimony of Hal Hudson, Executive Director
Kansas Pest Control Association
Before the Senate Judiciary Committee
On Senate Bill 667**

Mr. Chairman and members of the committee, thank you for this opportunity to appear here today. I am representing the members of the Kansas Pest Control Association, who have some concern about language contained in S.B. 667.

We are not opposed to the concept of this bill – only how it might be applied to pest control operators, their certified technicians and licensed applicators. All of these folks operate under license and regulation by the Kansas Department of Agriculture. Further, the U.S. Environmental Protection Agency, for the purpose of eradicating pests that threaten public health and property, regulates the chemicals they use.

To the extent that use of these products is subject to regulation by the EPA and the Kansas Department of Agriculture, these are “regulated chemicals.” Before these chemicals can be used, the formulators must submit them to rigorous testing and evaluation to gain EPA approval. We believe that pest control operators are using none of the chemicals listed in this bill, unless such chemicals are ingredients of formulations approved by EPA. Yet, licensed pest control operators could be subject to the reporting requirement because, by definition, they operate “controlled premises.” And they could be subjected to search and seizure of their property for violation of this act.

We respectfully suggest amending the language of the bill to include a statement similar to the following: ---“*except those persons, businesses, and/or corporations regulated under the Federal Insecticide Fungicide and Rodenticide Act, the Kansas Agricultural Chemical Act, and/or the Kansas Pesticide Law.*” We further request a specific definition of “chemicals” as intended by this bill to avoid confusion between the products we use and the products the bill intends to regulate.

Thank you.

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att 8
Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

Statement in Opposition to SB 667

Kansas Senate Judiciary Committee -- February 24, 1998

The Nonprescription Drug Manufacturers Association (NDMA) opposes SB 667 because it would require registration, reporting and recordkeeping for a list of "regulated chemicals" including those contained in hundreds of nonprescription or over-the-counter (OTC) cold and allergy medications. If the bill were to become law, all transactions involving OTC drugs that contain ephedrine, pseudoephedrine, and phenylpropanolamine (PPA) would be subject to the restrictions contained in the bill unless the particular drug product were exempted by rule. This bill would impact hundreds of cold and allergy medicines, all retail outlets that carry nonprescription drugs, and every wholesaler or distributor that ships OTC drugs into the state.

Pseudoephedrine (PSE) is approved as a decongestant by FDA and is contained in hundreds, if not thousands, of brand name and private label (store brand) nonprescription or over-the-counter (OTC) drugs. Ephedrine (EPH) is approved by FDA as a bronchodilator for the treatment of mild symptoms of asthma. Products that would be subject to the provisions of the bill include Sudafed®, Tylenol® Cold and Sinus, Primatene® Tablets, Nyquil®, Contac®, TheraFlu® Flu and Cold, and many others.

Section 3(l) of SB 667 creates a list of "regulated chemicals," including ephedrine, pseudoephedrine, and PPA, that would be subject to the regulatory controls in the bill. This would include the purchase, distribution, manufacture, administering, dispensing or possession of a drug product containing a regulated chemical, unless the drug product has been granted an exemption by the Secretary of Health and Environment. A manufacturer may apply to the Secretary for an exemption for a specific drug product containing a regulated chemical, but the manufacturer would have to show by a preponderance of the evidence that the product is manufactured and distributed in a manner to prevent diversion. If SB 667 were to become law, the Secretary will be inundated with hundreds of exemption petitions that will need to be reviewed pursuant to a complete rulemaking process.

Retailers and distributors of regulated chemicals would be required to register on an annual basis with the department. In order to possess a regulated chemical, a person would be required to get a permit each time the person seeks to possess a chemical. Registrants would be required to keep records of all transactions, file monthly reports, and would be prohibited from selling a regulated chemical without checking identification of the customer.

NDMA strongly opposes this bill in its current form. It would require manufacturers to go through a lengthy rulemaking process in order to seek an exemption for every OTC drug product containing a regulated chemical. Retail and wholesale distributors would have to verify that each product that they handle was exempt, or would be required to register, report and keep records. Since nonprescription drugs are already subject to a lengthy approval process or regulatory review by FDA, they should be exempted from this bill.