

Approved: 4-9-99  
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 11, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused  
Representative John Edmonds - Excused  
Representative Clark Shultz - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfschlegel, Committee Secretary

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association  
Elwaine Pomeroy, Kansas Credit Attorneys Association

Hearings on **SB 311 - filing of corporate documents**, were opened.

Ron Smith, Kansas Bar Association, appeared before the committee as a proponent of the bill. He stated that this past legislative session, dual filing requirements were eliminated but not all of the statutory references were amended. The proposed bill would address those changes. (Attachment 1)

Hearings on **SB 311** were closed.

Hearings on **SB 306 - filing and status of foreign judgements**, were opened.

Elwaine Pomeroy, Kansas Credit Attorneys Association, appeared before the committee as the sponsor of the bill. He commented that it would allow a certified copy of a foreign judgement to be filed with the clerk of the district court. He also requested that **HB 2371, 2428 & 2332** be amended into **SB 306**. (Attachment 2)

Hearings on **SB 306** were closed.

**HB 2469 -methamphetamine, chemical control act, crimes & penalties**

The committee was provided with a balloon amendment. (Attachment 3)

Representative Long made the motion to adopt the balloon. Representative Lightner seconded the motion. The motion carried.

Representative Haley made the motion to strike on page 24, line 34 "(2) any owner of an alleged illegal drug manufacturing site". Representative Howell seconded the motion. The motion failed.

Representative Pauls made the motion to have new section 10 apply only to drug enforcement officers. Representative Rehorn seconded the motion. The motion carried.

Representative Klein made the motion to amend new section 6, line 22 by moving a first offense to severity level A-1 and second offense to off grid to make the sentence life with review by the parole board at 15 years. Representative Swenson seconded the motion.

Representative Howell made the substitute motion to amend the first offense to a severity level A-2 and doubling sentencing box on second offenses. Representative Carmody seconded the motion. The motion failed 6-8.

Representative Carmody made the motion to amend the first offense to a severity level A-1 and doubling sentencing box on second offenses. Representative Howell seconded the motion. The motion failed 7-8.

The motion by Representative Klein carried.

Representative Howell made the motion to require Kansas Department of Health & Environment to give 48 hours notice that action will be taken to cleanup the property where meth was found. Representative Haley seconded the motion. With permission of the second Representative Howell withdrew his motion.

Representative Carmody made the motion to report **Substitute for HB 2469** favorably for passage. Representative Crow seconded the motion.

Representative Klein made the substitute motion to strike on page 4, lines 25 & 26 "It shall include, but not be limited to". Representative Swenson seconded the motion. The motion failed 8-8.

Representative Howell made the motion to strike section 1 to disallow the use of silencers. Representative Klein seconded the motion. With permission of the second Representative Howell withdrew his motion.

Representative Gregory made the motion to limit the use of silencers to only those who are enforcing drug related offenses. Representative Loyd seconded the motion. The motion carried.

Representative Pauls made the motion to amend on page 4 to require that hazardous materials be lawfully disposed of. Representative Crow seconded the motion. The motion carried.

Representative Carmody made the motion to report **Substitute for HB 2469** favorably for passage. Representative Lightner seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for March 15, 1999.



**KANSAS BAR  
ASSOCIATION**

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**Legislative Testimony  
by the  
Kansas Bar Association**

**TO: Members, House Judiciary Committee**

**FROM: Ron Smith, General Counsel  
Kansas Bar Association**

**SUBJ: SB 311**

**DATE: March 10, 1999**

Last session two bills went through that ended the requirement of dual filing of corporation documents with both the Secretary of State's office and the local register of deeds offices where the corporation was domiciled. The governor signed 1998 SB 472 and 1998 HB 2422 last year.

The Secretary of State's office, namely Melissa Wangemann, and our office, reviewed the statutes this fall to make sure we had found all the changes in the corporation code that needed changing to reflect the changes in SB 472. We found the statutes reflected in SB 311. It simply cleans up over a dozen statutes in the corporation code to reflect that we no longer record corporation documents with Registers of Deeds offices. We hope it is the last bill of this nature we need to bring to you.

Note one item in the title of the bill. Instead of amending KSA 17-7401, we simply outright repeal it. That section states the following:

**17-7401. Improperly recorded certificates or documents; effect.** In case any certificate or other document of any kind required by any of the provisions of this act to be recorded in the office of any of the registers of deeds of the several counties of this state shall have heretofore been, or shall hereafter be, recorded in the office of the register of deeds of a county of this state other than the county in which the certificate or other document is required to be recorded, the subsequent recording of the document in the office of the register of deeds in which the certificate or other document should have been recorded shall validate and confirm all acts done under or pursuant to the certificate or document, with like force and effect as if the certificate or document had been originally recorded as required by the provisions of this act.

This is 1972 stand-alone law. KSA 17-7401 is not referenced elsewhere in the statutes. You'll recall in SB 472, last year, we grandfathered all corporation filings which had been improperly recorded with the registers of deeds, and that grandfather language is now found in KSA 1998 Supp. 17-6003(d). We believe that 17-7401 is now superfluous.

Thank you.

**REMARKS CONCERNING SENATE BILL 306**

**HOUSE JUDICIARY COMMITTEE**

**MARCH 10, 1999**

Thank you for giving me the opportunity to appear before you on behalf of the Kansas Credit Attorneys Association, which is a group of Kansas attorneys who do considerable practice in Chapter 61 proceedings and related collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas. The organizations I represent appreciate this bill having been produced at our request.

This bill amends K.S.A. 60-3002, which is part of the Uniform Foreign Money Judgments Recognition Act, which was promulgated by the National Conference Of Commissioners On Uniform State Laws in 1962. I have been privileged to have served as one of the commissioners from Kansas since 1979. During my service in the Conference, I have seen many instances where the Conference determined that it was necessary to revise and update earlier uniform acts that had been promulgated. I am currently serving as a member of the Drafting Committee to revise the Uniform Parentage Act which was promulgated in 1973.

The groups that I represent feel that it is necessary to update this statute in order to accomplish two things:

1. Make it easier to register a foreign judgment in Kansas by allowing a certified copy of the judgment to be filed.



2. Provide that if at the time the judgment is filed in Kansas, it is enforceable in the jurisdiction where it was originally rendered, the Kansas statute of limitations on judgments in Kansas shall not keep it from being enforced in Kansas.

Current law requires that the judgment be authenticated. Some jurisdictions do not have a procedure to authenticate a judgment, but do provide a method for certification of judgments.

The part dealing with the statute of limitations would in effect overrule Johnson Bros. Wholesale Liquor Co. v. Clemmons, 661 P. 2d 1242, 233 Kan. 405 (Kan. 1983) and other cases interpreting K.S.A. 60-3002. These cases have held that the Kansas statute of limitations on a foreign judgment begins to run when the judgment is originally rendered in the foreign jurisdiction, rather than looking to the statute of limitations of the state where it was rendered.

It is not at all uncommon for a Kansas attorney to be hired to register a foreign judgment in Kansas many years after the judgment was originally rendered in the foreign jurisdiction. Usually the judgment creditor has lost track of the judgment debtor and only recently discovered that the debtor has moved to Kansas. The current statute allows, for instance, a Colorado resident to escape liability on an otherwise valid obligation by moving to Kansas after the Kansas statute had run on a Colorado judgment, even if under Colorado law it were still enforceable in Colorado.

If the foreign judgment is otherwise valid in the jurisdiction where it was originally rendered, a creditor should be allowed to enforce that judgment in Kansas if the debtor has moved to Kansas. SB 306 will make that possible.

Our groups also are very concerned about the strong possibility that the Kansas laws and procedures concerning garnishment and execution might not survive an attack that alleges that they do not provide constitutionally required due process. Your committee was kind enough to

introduce 3 bills at our request to provide notice to defendants of the exemptions available to them when their property has been taken by garnishment or execution—HB 2371, HB 2428, and HB 2332. We feel it is important that the contents of those bills be enacted this year. We therefore are asking that the contents of those bills be amended into SB 306.

Your committee heard me explain the contents of those bills during the hearing on February 15. When you started to work them a week later, I am told that there was confusion as to just what the present garnishment procedure is. To assist you, I have obtained from Bruce C. Ward, an attorney in Wichita, a memo which describes the current procedure. That memo is attached to my prepared testimony. Also attached is our formal request that the contents of HB 2371, HB 2428, and HB 2332 be amended into SB 306. I would be happy to review that with you, or, if you prefer, the committee can consider both attachments when you work SB 306.

Elwaine F. Pomeroy  
For Kansas Credit Attorneys Association  
And Kansas Collectors Association, Inc.

## Current Kansas Garnishment Procedure

The current procedure for garnishment in Kansas is identical under Chapter 60 and Chapter 61. The required forms are set forth in a slightly different manner in each chapter.

There are basically two types of garnishment used, wage garnishment and bank garnishment.

### Wage Garnishment

A request for garnishment is filed by the plaintiff with the clerk. A garnishment order is issued and typically served on the garnishee (wage employer) by the sheriff. There is no requirement to serve a copy of the order on the defendant.

Served on the garnishee with the order is a copy of the answer and instructions to be used by the garnishee in calculating the proper amount to withhold from the garnishee=s wages.

The order takes effect on the date it is served on the garnishee and covers all pay periods which fall due within the 30 day period on and after the date the order is served.

The garnishee is obligated to begin withholding the proper amount from the defendant=s wages for all pay periods which come due during the 30 day period after the order is served on the garnishee. Typically, the proper amount to be withheld is 25% of the take home pay. A minimum is required to be earned before withholding can occur. These restrictions are set by federal law.

The only notice given to the defendant after the withholding has begun would be the normal pay stub which shows the deductions made for the garnishment.

The garnishee is required to complete the answer form within 40 days after the order is served and file the answer with the clerk. The clerk is required to mail a copy of the answer to the plaintiff and defendant after it is filed. The plaintiff or defendant may object to the answer within 10 days after the filing of the answer. The procedure to file an objection and request a hearing is not at all clear under the current law and usually requires the assistance of an attorney experienced in garnishments. If an objection is filed, a hearing is held by the court to resolve the objection.

No more than one wage garnishment can be filed by the plaintiff against the defendant within a 30 day period.

## Bank Garnishment

The procedure is identical to wage garnishment. The order goes into effect on the day it is served on the bank and covers all money the defendant has in all accounts with the bank on the day the order is served and covers any additional money deposited thereafter until the date the bank prepares and files its answer.

Some banks notify the defendant (their depositor) that a bank garnishment has been filed, although there is no requirement under the garnishment statutes to do so.

There is no requirement to serve a copy of the order on the defendant unless the garnishment is issued prior to judgment. This rarely occurs.

A copy of the answer form is served along with the order. The answer form is different from the one used for wage garnishment. There are no instructions given to the bank apart from some explanation set forth in the order and the answer form.

The bank is required to file its answer with the clerk within 10 days after the order is served (40 days if the bank is not located in the county where the garnishment order is issued).

The bank is required to withhold all funds in all accounts up to 150% of the amount of the judgment balance. If the account is owned jointly by the defendant and a third party, the bank is required to disclose this on the answer form and to withhold the entire amount of the funds in the account. This provision was added to the law recently and overrules the decision in Walnut Valley State Bank v. Stovall, 574 P.2d 1382, 223 Kan. 459 (1978).

After the answer is filed, a copy is mailed by the clerk to the plaintiff and defendant, either of whom may file an objection within 10 days after the filing date. The objection and hearing procedure is identical to wage garnishment.

**REQUEST TO AMENDED HOUSE BILL 2371, HOUSE BILL 2428, AND HOUSE  
BILL 2332 INTO SENATE BILL 306**

**HOUSE JUDICIARY COMMITTEE**

**MARCH 10, 1999**

These bills propose to fix a potential constitutional problem with the Kansas garnishment and execution statutes.

There is a growing line of cases (mostly federal) from across the country which have held that procedural due process requirements of the 14th Amendment to the U. S. Constitution and similar provisions in state constitutions require that where there is a taking of a judgment debtor's property under garnishment or execution procedures, the debtor is entitled to notice of what exemptions may apply to the property taken and of the procedure that can be invoked to assert any claim of exemption.

These cases include Aacen v. San Juan County Sheriff's Dept., 944 F. 2d 691 (10th Cir. 1991); Finberg v. Sullivan, 634 F. 2d 50 (3rd Cir. 1980); Deary v. Guardian Loan Co., Inc., 534 F. Supp. 1178 (S.D.N.Y. 1982); Dionne v. Bouley, 757 F. 2d 1344 (1st Cir. 1985); and most recently a case decided by the Montana Supreme Court, Dorwart v. Caraway, 1998 MT 191 (Aug, 1998).

It is believed by those who practice law in the area of debt collection that the current Kansas statutes on garnishment and execution do not meet the due process requirements set forth in the cases cited above. These three bills are designed to correct this.

Specifically, HB 2371 would amend the garnishment statutes under Chapter 60; HB 2428 would amend the garnishment statutes under Chapter 61; and HB 2332 would provide for

notice when a writ of execution upon property. These bills should be merged together as they address a common problem which cannot be fixed without consideration and passage of all of them. All three of them deal with civil procedure; SB 306 also deals with civil procedure, and is a good host vehicle for the merger.

The proposed amendments to the garnishment procedures under Chapter 60 and Chapter 61 contained in HB 2371 and HB 2428 can be summarized as follows:

1. The garnishee, whether on a wage or financial institution account garnishment, shall complete and file its answer in the same manner as now required under current law, except that the garnishee shall disclose on the answer form the last known address of the defendant according to the records of the garnishee.
2. If the answer indicates that the garnishee is holding funds or property of the defendant, the garnishee shall mail a copy of its answer to the plaintiff's attorney.
3. The plaintiff's attorney shall deliver or mail a notice to the defendant within 10 days after a copy of the answer is mailed to the attorney by the garnishee.
4. The notice form will set forth a list of the most common exemptions which apply to property taken under garnishment and a summary of the procedure by which the defendant can request a hearing to assert any claim of exemption. There are separate notice forms for wage and non-wage garnishments.
5. If the defendant wishes to request a hearing, the defendant within 10 days after the notice is served on the defendant by contacting the clerk to obtain a hearing date and notify the plaintiff's attorney of the date and time of the hearing.

6. If a hearing is requested, the court shall conduct the hearing within 5 to 10 days after the request is made. At the hearing, the court shall enter an order determining the exemption and such other order or orders as is appropriate.

The requirement that the garnishee promptly mail a copy of the answer to the plaintiff's attorney is to make sure that the attorney is made aware of the taking of the defendant's property, which will trigger the need for the attorney to send the notice to the defendant, as soon as possible after the taking of the defendant's property has occurred. Although current law requires the clerk to mail a copy of the answer to both plaintiff and defendant, because of the backlog in the clerk's office in the metropolitan areas, it is often up to three weeks after filing of the garnishment answer before the plaintiff's attorney receives a copy of the answer.

The requirement that the garnishee disclose the last known address for the defendant is to ensure that the plaintiff's attorney will have an accurate address with which to mail the notice to the defendant. Although the plaintiff's attorney may know where the defendant works or banks, the attorney does not always know where the defendant currently resides, because the defendant may have moved since the time the lawsuit was originally filed.

The proposed amendments to the execution procedures under the code of civil procedure, contained in HB 2332, can be summarized as follows:

1. A copy of the writ of execution shall be served on the defendant as required under current law.
2. The notice of exemptions and procedure to request a hearing shall be served on the defendant along with the writ of execution.
3. The notice form is similar to the form proposed for non-wage garnishments.



4. The procedure to request and hold a hearing is identical to that proposed for garnishments.

The cases dealing with the constitutionally required providing notice of exemptions indicate that the notice should be given at about the time the property is taken. It should be noted that the giving to the defendant notice of exemptions is simpler for executions than for garnishments, because the writ of execution is served on the defendant directly, as contrasted to a garnishment, which is served on someone other than the defendant. In an execution, notice of exemptions can be given directly to the defendant at precisely the same time as the writ of execution is served. In garnishment situations, there is the problem of timing. If the defendant learns that a garnishment is about to take place, the defendant may move money to another financial institution, or otherwise try to avoid the garnishment. On the other hand, the notice of exemptions cannot be too far removed in time from the actual taking of defendant's property. There is concern as to meeting the constitutional requirement if the notice is given either too early, such as at the time the suit is filed, or when judgment is taken; or too late, if much time passes after the time of taking of property before the providing notice of exemptions.

It is believed that these bills present a balanced solution to the potential constitutional problems pointed out above. They give due regard to the interests of all parties: plaintiff, defendant, and garnishee, and particularly without placing any substantial new burdens on the garnishee.

We respectfully request that the contents of HB 2371, HB 2428, and HB 2332 be amended into SB 306, and it be passed as so amended.

Elwaine F. Pomeroy  
Kansas Credit Attorneys Association  
And Kansas Collectors Association, Inc.

# HOUSE BILL No. 2469

By Committee on Judiciary

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## Proposed Amendments

Note: Internal references will be amended  
in committee report as necessary.

House Judiciary  
3-11-99  
Attachment 3

9 AN ACT concerning drugs; relating to methamphetamine and other  
10 chemicals; crimes and criminal procedure; enacting the Kansas chem-  
11 ical control act; ~~enacting the~~ prescribing certain penalties; amending  
12 K.S.A. 1998 Supp. 21-4201, ~~21-4705~~, 22-2512, 65-4101, 65-4152, 65-  
13 159, ~~65-4161 and 65-4163~~ and repealing the existing sections.

and

21-4705,

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 1998 Supp. 21-4201 is hereby amended to read as  
17 follows: 21-4201. (a) Criminal use of weapons is knowingly:

18 (1) Selling, manufacturing, purchasing, possessing or carrying any  
19 bludgeon, sandclub, metal knuckles or throwing star, or any knife, com-  
20 monly referred to as a switch-blade, which has a blade that opens auto-  
21 matically by hand pressure applied to a button, spring or other device in  
22 the handle of the knife, or any knife having a blade that opens or falls or  
23 is ejected into position by the force of gravity or by an outward, downward  
24 or centrifugal thrust or movement;

25 (2) Carrying concealed on one's person, or possessing with intent to  
26 use the same unlawfully against another, a dagger, dirk, billy, blackjack,  
27 slung shot, dangerous knife, straight-edged razor, stiletto or any other  
28 dangerous or deadly weapon or instrument of like character, except that  
29 an ordinary pocket knife with no blade more than four inches in length  
30 and " " not be construed to be a dangerous knife, or a dangerous or deadly  
31 weapon or instrument;

32 (3) Carrying on one's person or in any land, water or air vehicle, with  
33 intent to use the same unlawfully, a tear gas or smoke bomb or projector  
34 or any object containing a noxious liquid, gas or substance;

35 (4) Carrying any pistol, revolver or other firearm concealed on one's  
36 person except when on the person's land or in the person's abode or fixed  
37 place of business;

38 (5) Setting a spring gun;

39 (6) Possessing any device or attachment of any kind designed, used  
40 or intended for use in silencing the report of any firearm;

41 (7) Selling, manufacturing, purchasing, possessing or carrying a shot-  
42 gun with a barrel less than 18 inches in length or any other firearm de-  
43 signed to discharge or capable of discharging ammunition.

once by a single function of the trigger;

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight; or

(9) possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a molotov cocktail or a pipe bomb.

(b) Subsections (a)(1), (2), (3), (4) and (7) shall not apply to or affect any of the following:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1), (2) and (3) to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or

(6) special deputy sheriffs described in K.S.A. 1998 Supp. 19-827 who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(d) Subsections (a)(1), (6) and (7) shall not apply to any person who

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which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 *et seq.* in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(8) shall not apply to a governmental laboratory or solid plastic bullets.

(f) *Subsection (a)(6) shall not apply to law enforcement officers who are assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training and are in possession of commercially manufactured devices which are owned by the law enforcement agency and approved by the bureau of alcohol, tobacco and firearms of the United States department of justice.*

(g) It shall be a defense that the defendant is within an exemption.

~~(g)~~ (h) Violation of subsections (a)(1) through (a)(5) or subsection (a)(9) is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a severity level 9, nonperson felony.

~~(h)~~ (i) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

~~Sec. 2. K.S.A. 1998 Supp. 21-4706 is hereby amended to read as follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 15% of the primary sentence for good time as authorized by law.~~

~~(b) The sentencing court shall pronounce sentence in all felony cases.~~

~~(c) Violations of K.S.A. 21-3401, subsection (a) of K.S.A. 21-3402, 21-3439 and 21-3801 and subsection (b)(2) of K.S.A. 65-4159 and amendments thereto are off-grid crimes for the purpose of sentencing. Except as otherwise provided by K.S.A. 21-4622 through 21-4627, and 21-4629 through 21-4631, and amendments thereto, the sentence shall be imprisonment for life.~~

Sec. 3. K.S.A. 1998 Supp. 22-2512 is hereby amended to read as follows: 22-2512. (1) Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the magistrate, and shall be so kept as long as necessary for the purpose of being produced as evidence on any trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or

{Stricken if sentencing commission amendment on page 9 is adopted.}

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1 arrested particularly describing each article of property being held and  
2 shall file a copy of such receipt with the magistrate before whom the  
3 person detained or arrested is taken. Where seized property is no longer  
4 required as evidence in the prosecution of any indictment or information,  
5 the court which has jurisdiction of such property may transfer the same  
6 to the jurisdiction of any other court, including courts of another state or  
7 federal courts, where it is shown to the satisfaction of the court that such  
8 property is required as evidence in any prosecution in such other court.

9 (2) (a) *Notwithstanding the provisions of subsection (1) and with the*  
10 *approval of the affected court, any law enforcement officer who seizes*  
11 *hazardous materials as evidence related to a criminal investigation may*  
12 *collect representative samples of such hazardous materials, and destroy*  
13 *or dispose of, or direct another person to destroy or dispose of the re-*  
14 *maining quantity of such hazardous materials.*

15 (b) *In any prosecution, representative samples of hazardous materials*  
16 *accompanied by photographs, videotapes, laboratory analysis reports or*  
17 *other means used to verify and document the identity and quantity of the*  
18 *material shall be deemed competent evidence of such hazardous materials*  
19 *and shall be admissible in any proceeding, hearing or trial as if such*  
20 *materials had been introduced as evidence.*

21 (c) *As used in this section, the term "hazardous materials" means any*  
22 *substance which is capable of posing an unreasonable risk to health, safety*  
23 *and property. It shall include any substance which by its nature is explo-*  
24 *sive, flammable, corrosive, poisonous, radioactive, a biological hazard or*  
25 *a material which may cause spontaneous combustion. It shall include, but*  
26 *not be limited to, substances listed in the table of hazardous materials*  
27 *contained in the code of federal regulations title 49 and national fire pro-*  
28 *tection association's fire protection guide on hazardous materials.*

29 (2) (3) When property seized is no longer required as evidence, it  
30 shall be disposed of as follows:

31 (a) Property stolen, embezzled, obtained by false pretenses, or oth-  
32 erwise obtained unlawfully from the rightful owner thereof shall be re-  
33 stored to the owner;

34 (b) money shall be restored to the owner unless it was contained in  
35 a slot machine or otherwise used in unlawful gambling or lotteries, in  
36 which case it shall be forfeited, and shall be paid to the state treasurer  
37 pursuant to K.S.A. 20-2801, and amendments thereto;

38 (c) property which is unclaimed or the ownership of which is un-  
39 known shall be sold at public auction to be held by the sheriff and the  
40 proceeds, less the cost of sale and any storage charges incurred in pre-  
41 serving it, shall be paid to the state treasurer pursuant to K.S.A. 20-2801,

42 and amendments thereto;

43 (d) property which is not required as evidence in any prosecution shall be disposed of as follows:

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articles the disposition of which is otherwise provided by law shall be dealt with as so provided and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may in the discretion of the court be sold and the proceeds disposed of as provided in subsection (2)(b);

(e) firearms, ammunition, explosives, bombs and like devices, which have been used in the commission of crime, may be returned to the rightful owner, or in the discretion of the court having jurisdiction of the property, destroyed or forfeited to the Kansas bureau of investigation as provided in K.S.A. 21-4206 and amendments thereto;

(f) controlled substances forfeited under the uniform controlled substances act shall be dealt with as provided under K.S.A. 60-4101 through 60-4126 and amendments thereto;

(g) unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

Sec. 4. K.S.A. 1998 Supp. 65-4101 is hereby amended to read as follows: 65-4101. As used in this act: (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by: (1) A practitioner or pursuant to the lawful direction of a practitioner;

or

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

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

(c) "Board" means the state board of pharmacy.

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

(e) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments to these sections.

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

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

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1 (h) "Dispense" means to deliver a controlled substance to an ultimate  
2 user or research subject by or pursuant to the lawful order of a practi-  
3 tioner, including the packaging, labeling or compounding necessary to  
4 prepare the substance for that delivery.

5 (i) "Dispenser" means a practitioner or pharmacist who dispenses.

6 (j) "Distribute" means to deliver other than by administering or dis-  
7 pensing a controlled substance.

8 (k) "Distributor" means a person who distributes.

9 (l) "Drug" means: (1) Substances recognized as drugs in the official  
10 United States pharmacopoeia, official homeopathic pharmacopoeia of the  
11 United States or official national formulary or any supplement to any of  
12 them; (2) substances intended for use in the diagnosis, cure, mitigation,  
13 treatment or prevention of disease in man or animals; (3) substances  
14 (other than food) intended to affect the structure or any function of the  
15 body of man or animals; and (4) substances intended for use as a com-  
16 ponent of any article specified in clause (1), (2) or (3) of this subsection.  
17 It does not include devices or their components, parts or accessories.

18 (m) "Immediate precursor" means a substance which the board has  
19 found to be and by rule and regulation designates as being the principal  
20 compound commonly used or produced primarily for use and which is  
21 an immediate chemical intermediary used or likely to be used in the  
22 manufacture of a controlled substance, the control of which is necessary  
23 to prevent, curtail or limit manufacture.

24 (n) "Manufacture" means the production, preparation, propagation,  
25 compounding, conversion or processing of a controlled substance either  
26 directly or indirectly by extraction from substances of natural origin or  
27 independently by means of chemical synthesis or by a combination of  
28 extraction and chemical synthesis and includes any packaging or repack-  
29 aging of the substance or labeling or relabeling of its container, except  
30 that this term does not include the preparation or compounding of a  
31 controlled substance by an individual for the individual's own use or the  
32 preparation, compounding, packaging or labeling of a controlled sub-  
33 stance: (1) By a practitioner or the practitioner's agent pursuant to a lawful  
34 order of a practitioner as an incident to the practitioner's administering  
35 or dispensing of a controlled substance in the course of the practitioner's  
36 professional practice; or

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

41 (o) "Marijuana" means all parts of all varieties of the plant *Cannabis*  
42 whether growing or not, the seeds thereof, the resin extracted from any  
43 part of the plant and every compound, manufacture, preparation, or derivative thereof.

the preparation or compounding of a controlled substance by an individual for the individual's own lawful use or

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2 ture or preparation of the plant, its seeds or resin. It does not include the  
3 mature stalks of the plant, fiber produced from the stalks, oil or cake  
4 made from the seeds of the plant, any other compound, manufacture,  
5 salt, derivative, mixture or preparation of the mature stalks, except the  
6 resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the  
7 plant which is incapable of germination.

8 (p) "Narcotic drug" means any of the following whether produced  
9 directly or indirectly by extraction from substances of vegetable origin or  
10 independently by means of chemical synthesis or by a combination of  
11 extraction and chemical synthesis: (1) Opium and opiate and any salt,  
12 compound, derivative or preparation of opium or opiate;

13 (2) any salt, compound, isomer, derivative or preparation thereof  
14 which is chemically equivalent or identical with any of the substances  
15 referred to in clause (1) but not including the isoquinoline alkaloids of  
16 opium;

17 (3) opium poppy and poppy straw;

18 (4) coca leaves and any salt, compound, derivative or preparation of  
19 coca leaves, and any salt, compound, isomer, derivative or preparation  
20 thereof which is chemically equivalent or identical with any of these sub-  
21 stances, but not including decocainized coca leaves or extractions of coca  
22 leaves which do not contain cocaine or ecgonine.

23 (q) "Opiate" means any substance having an addiction-forming or  
24 addiction-sustaining liability similar to morphine or being capable of con-  
25 version into a drug having addiction-forming or addiction-sustaining li-  
26 ability. It does not include, unless specifically designated as controlled  
27 under K.S.A. 65-4102 and amendments thereto, the dextrorotatory iso-  
28 mer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).  
29 It does include its racemic and levorotatory forms.

30 (r) "Opium poppy" means the plant of the species *Papaver somni-*  
31 *ferum L.* except its seeds.

32 (s) "Person" means individual, corporation, government, or govern-  
33 mental subdivision or agency, business trust, estate, trust, partnership or  
34 association or any other legal entity.

35 (t) "Poppy straw" means all parts, except the seeds, of the opium  
36 poppy, after mowing.

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

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

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

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

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

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

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

(bb) (1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107 and amendments thereto; and:

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

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

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

(A) A controlled substance;

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

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

(D) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

Sec. 5. K.S.A. 1998 Supp. 65-4152 is hereby amended to read as follows: 65-4152. (a) No person shall use or possess with intent to use:

(1) Any simulated controlled substance;

(2) any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the uniform controlled substances act; or

(3) any drug paraphernalia to plant, propagate, cultivate, grow, harvest, transport, export, import, produce, process, prepare, test

1 analyze, pack, repack, sell or distribute a controlled substance in violation  
2 of the uniform controlled substances act.; or

3 (4) anhydrous ammonia for the illegal production of a controlled sub-  
4 stance in a container not approved for that chemical by the Kansas de-  
5 partment of agriculture.

6 (b) Violation of subsections (a)(1) or (2) is a class A nonperson  
7 misdemeanor.

8 (c) Violation of subsection (a)(3) other than as described in paragraph  
9 (d) or subsection (a)(4) is a drug severity level 4 felony.

10 (d) Violation of subsection (a)(3) which involves the possession of  
11 drug paraphernalia for the planting, propagation, growing or harvesting  
12 of less than five marijuana plants is a class A nonperson misdemeanor.

13 Sec. 6. K.S.A. 1998 Supp. 65-4159 is hereby amended to read as  
14 follows: 65-4159. (a) Except as authorized by the uniform controlled sub-  
15 stances act, it shall be unlawful for any person to manufacture any con-  
16 trolled substance or controlled substance analog.

17 (b) Any person violating the provisions of this section with respect to  
18 the unlawful manufacturing or attempting to unlawfully manufacture any  
19 controlled substance or controlled substance analog, upon conviction, is  
20 guilty of:

21 (1) A drug severity level 2 ~~(4)~~ felony upon conviction for a first offense;

22 (2) a drug severity level 1 felony ~~upon conviction for a first offense~~ upon con-  
23 viction for a second offense or subsequent offense and the sentence for  
24 which shall not be subject to statutory provisions for suspended sentence,  
25 community work service, or probation.

26 (c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-  
27 ments thereto, shall not apply to a violation of attempting to unlawfully  
28 manufacture any controlled substance pursuant to this section.

29 (d) Notwithstanding any other provision of law, upon conviction of  
30 any person for violating subsection (a), such person shall be guilty of a  
31 drug severity level 1 felony if such person is 18 or more years of age and  
32 the substances involved were manufactured within 1,000 feet of any  
33 school property upon which is located a structure used by a unified school  
34 district or an accredited nonpublic school for student instruction or at-  
35 tendance or extracurricular activities of pupils enrolled in kindergarten  
36 or any of the grades one through 12 ~~any public park, child care facility~~  
37 ~~or retail store~~

38 Nothing in this subsection shall be construed as requiring that school  
39 be in session or that classes are actually being held at the time of the  
40 offense or that children must be present within the structure or on the  
41 property during the time of any alleged criminal act. If the structure or  
42 property meets the description above, the actual use of that structure or  
43 property at the time alleged shall not be a defense to the crime charged

2 {option A or B}

a drug severity level 1 felony {Option A, sentencing commission. See companion amendment to K.S.A. 1998 Supp. 21-4705, attached.} notwithstanding the offender's criminal history, a drug severity level 1 felony, category A {Option B, sentencing commission.}

{Attorney General / KBI have agreed to striking "retail store".}

or the sentence imposed.

2 Sec. 7. K.S.A. 1998 Supp. 65-4161 is hereby amended to read as  
3 follows: 65-4161. (a) Except as authorized by the uniform controlled sub-  
4 stances act, it shall be unlawful for any person to sell, offer for sale or  
5 have in such person's possession with intent to sell, deliver or distribute;  
6 prescribe; administer; deliver; distribute; dispense or compound any opi-  
7 ates, opium or narcotic drugs, or any stimulant designated in subsection  
8 (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except  
9 as provided in subsections (b), (c) and (d), any person who violates this  
10 subsection shall be guilty of a drug severity level 3 felony.

11 (b) If any person who violates this section has one prior conviction  
12 under this section or a conviction for a substantially similar offense from  
13 another jurisdiction, then that person shall be guilty of a drug severity  
14 level 2 felony.

15 (c) If any person who violates this section has two or more prior  
16 convictions under this section or substantially similar offenses under the  
17 laws of another jurisdiction, then such person shall be guilty of a drug  
18 severity level 1 felony.

19 (d) Notwithstanding any other provision of law, upon conviction of  
20 any person for a first offense pursuant to subsection (a), such person shall  
21 be guilty of a drug severity level 2 felony if such person is 18 or more  
22 years of age and the substances involved were possessed with intent to  
23 sell, deliver or distribute; sold or offered for sale in or on, or within 1,000  
24 feet of any school property upon which is located a structure used by a  
25 unified school district or an accredited nonpublic school for student in-  
26 struction or attendance or extracurricular activities of pupils enrolled in  
27 kindergarten or any of the grades one through 12 or any public park,  
28 child care facility or retail store.

29 Nothing in this subsection shall be construed as requiring that school  
30 be in session or that classes are actually being held at the time of the  
31 offense or that children must be present within the structure or on the  
32 property during the time of any alleged criminal act. If the structure or  
33 property meets the description above, the actual use of that structure or  
34 property at the time alleged shall not be a defense to the crime charged  
35 or the sentence imposed.

36 (e) It shall not be a defense to charges arising under this section that  
37 the defendant was acting in an agency relationship on behalf of any other  
38 party in a transaction involving a controlled substance.

39 (f) For purposes of the uniform controlled substances act, the pro-  
40 hibitions contained in this section shall apply to controlled substance an-  
41 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments  
thereo.

~~to the uniform controlled substances act.]~~

3 Sec. 8. K.S.A. 1998 Supp. 65-4163 is hereby amended to read as  
 4 follows: 65-4163. (a) Except as authorized by the uniform controlled sub-  
 5 stances act, it shall be unlawful for any person to sell, offer for sale or  
 6 have in such person's possession with the intent to sell, deliver or distrib-  
 7 ute; cultivate; prescribe; administer; deliver; distribute; dispense or  
 8 compound:

9 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,  
 10 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109  
 11 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

12 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-  
 13 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.  
 14 65-4109, and amendments thereto;

15 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-  
 16 4105, and amendments thereto or designated in subsection (g) of K.S.A.  
 17 65-4107 and amendments thereto;

18 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and  
 19 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)  
 20 of K.S.A. 65-4111, and amendments thereto; or

21 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-  
 22 4109, and amendments thereto.

23 Except as provided in subsection (b), any person who violates this sub-  
 24 section shall be guilty of a drug severity level 3 felony.

25 (b) Notwithstanding any other provision of law, upon conviction of  
 26 any person pursuant to subsection (a) for an offense in which the sub-  
 27 stances involved were possessed with intent to sell, sold or offered for  
 28 sale in or on, or within 1,000 feet of any school property upon which is  
 29 located a structure used by a unified school district or an accredited non-  
 30 public school for student instruction or attendance or extracurricular ac-  
 31 tivities of pupils enrolled in kindergarten or any of the grades one through  
 32 2 or any public park, child care facility or retail store and such person  
 33 is 18 or more years of age, such person shall be guilty of a drug severity  
 34 level 2 felony.

35 Nothing in this subsection shall be construed as requiring that school  
 36 be in session or that classes are actually being held at the time of the  
 37 offense or that children must be present within the structure or on the  
 38 property during the time of any alleged criminal act. If the structure or  
 39 property meets the description above, the actual use of that structure or  
 40 property at the time alleged shall not be a defense to the crime charged  
 41 or the sentence imposed.

42 (c) It shall not be a defense to charges arising under this section that  
 43 the defendant was acting in an agency relationship on behalf of any other  
 44 party in a transaction involving a controlled substance.

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~~[(d) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.]~~

~~[(c) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.]~~

New Sec. 9. (a) Unlawful endangerment is: (1) While engaged in or as a part of the production of a controlled substance, protecting or attempting to protect the production of a controlled substance by creating, setting up, building, erecting or using any device or weapon which causes or is intended to cause damage or injury to another person;

(2) while engaged in or as a part of the production of a controlled substance, protecting or attempting to protect the production of a controlled substance by creating, setting up, building, erecting or using any device or weapon which causes physical injury; or

(3) while engaged in or as a part of the production of a controlled substance, protecting or attempting to protect the production of a controlled substance by creating, setting up, building, erecting or using any device or weapon which cause serious physical injury.

(b) (1) Unlawful endangerment as described in subsection (a)(1) is a ~~drug level~~ felony.

[severity level 8, nonperson

(2) Unlawful endangerment as described in subsection (a)(2) is a severity level ~~3~~ person felony.

[7

(3) Unlawful endangerment as described in subsection (a)(3) is a severity level ~~2~~ person felony.

[5

New Sec. 10. Any county in the state of Kansas which borders another state, with the agreement of the sheriff, may enter into agreement with the political subdivisions in such other state's contiguous county to form a multijurisdictional law enforcement group for the enforcement of drug and controlled substances laws. Such other state's law enforcement officers may be deputized as officers of the counties of this state participating in such an agreement and shall be deemed to have met all requirements of law enforcement training and certification required under K.S.A. 74-5601 et seq. and amendments thereto if such officers have satisfied the applicable law enforcement officer training and certification standards in force in such other state. Such other state's law enforcement officers shall have the same powers and immunities as law enforcement officers certified and commissioned in Kansas while conducting investigations with the multijurisdictional enforcement group.

{All above, sentencing commission.}

New Sec. 11. Sections 11 through 30 and amendments thereto shall be known and may be cited as the Kansas chemical control act.

New Sec. 12. The purpose of the Kansas chemical control act is to prevent the illegal diversion of precursor chemicals by creating a system

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hich will provide information regarding the distribution of regulated chemicals while protecting legitimate uses.

3 New Sec. 13. As used in sections 11 through 30 and amendments  
4 thereto:

5 (a) "Act" means the Kansas chemical control act;

6 (b) "administer" means the application of a regulated chemical  
7 whether by injection, inhalation, ingestion or any other means, directly  
8 into the body of a patient or research subject, such administration to be  
9 conducted by: (1) A practitioner, or in the practitioner's presence, by such  
10 practitioner's authorized agent; or

11 (2) the patient or research subject at the direction and in the presence  
12 of the practitioner;

13 (c) "agent or representative" means a person who is authorized to  
14 receive, possess, manufacture or distribute or in any other manner control  
15 or has access to a regulated chemical on behalf of another person;

16 (d) "bureau" means the Kansas bureau of investigation;

17 (e) "controlled premises" means: (1) A place where regulated chem-  
18 ical distributors or retailers are required under this act to, or in fact, keep  
19 or maintain records related to regulated chemical transactions; and

20 (2) a place, including a factory, warehouse, establishment and con-  
21 veyance, in which regulated chemical distributors or regulated chemical  
22 retailers are permitted under this act to, or in fact, possess, manufacture,  
23 compound, process, sell, deliver or dispose of a regulated chemical;

24 (f) "department" means the Kansas department of health and  
25 environment;

26 (g) "director" means the director of the Kansas bureau of  
27 investigation;

28 (h) "dispense" means to deliver a regulated chemical to an ultimate  
29 user, patient or research subject by, or pursuant to the lawful order of, a  
30 practitioner, including the prescribing, administering, packaging, labeling  
or compounding necessary to prepare the regulated chemical for that  
delivery;

33 (i) "distribute" means to deliver other than by administering or dis-  
34 pensing a regulated chemical;

35 (j) "manufacture" means to produce, prepare, propagate, compound,  
36 convert or process a regulated chemical directly or indirectly, by extrac-  
37 tion from substances of natural origin, chemical synthesis or a combina-  
38 tion of extraction and chemical synthesis, and includes packaging or re-  
39 packaging of the substance or labeling or relabeling of its container. The  
40 term excludes the preparation, compounding, packaging, repackaging, la-  
41 beling or relabeling of a regulated chemical:

(1) By a practitioner as an incident to the practitioner's administering

... of a regulated chemical in the course of the practitioner's

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- 1 professional practice; or  
 2 (2) by a practitioner, or by the practitioner's authorized agent under  
 3 the practitioner's supervision, for the purpose of, or as an incident to  
 4 research, teaching or chemical analysis and not for sale;  
 5 (k) "person" means individual, corporation, business trust, estate,  
 6 trust, partnership, association, joint venture, government, governmental  
 7 subdivision or agency, or any other legal or commercial entity;  
 8 (l) "practitioner" means a physician, dentist, veterinarian, pharmacist,  
 9 pharmacy, hospital or other person licensed, registered or otherwise per-  
 10 mitted, by the state, to distribute, dispense, conduct research with respect  
 11 to or administer a regulated chemical in the course of professional prac-  
 12 tice or research;  
 13 (m) "regulated chemical" means a chemical that is used directly or  
 14 indirectly to manufacture a controlled substance or other regulated chem-  
 15 ical in violation of the state controlled substances act or this act. The fact  
 16 that a chemical may be used for a purpose other than the manufacturing  
 17 of a controlled substance or regulated chemical does not exempt it from  
 18 the provisions of this act. Regulated chemical includes:  
 19 (1) Acetic anhydride (CAS No. 108-24-7);  
 20 (2) benzaldehyde (CAS No. 100-52-7);  
 21 (3) benzyl chloride (CAS No. 100-44-7);  
 22 (4) benzyl cyanide (CAS No. 140-29-4);  
 23 (5) diethylamine and its salts (CAS No. 109-89-7);  
 24 (6) ephedrine, its salts, optical isomers and salts of optical isomers  
 25 (CAS No. 299-42-3);  
 26 (7) hydriodic acid (CAS No. 10034-85-2);  
 27 (8) iodine (CAS No. 7553-56-2);  
 28 (9) lithium (CAS No. 7439-93-2);  
 29 (10) methylamine and its salts (CAS No. 74-89-5);  
 30 (11) nitroethane (CAS No. 79-24-3);  
 31 (12) chloroephedrine, its salts, optical isomers, and salts of optical  
 32 isomers (CAS No. 30572-91-9);  
 33 (13) phenylacetic acid, its esters and salts (CAS No. 103-82-2);  
 34 (14) phenylpropanolamine, its salts, optical isomers, and salts of op-  
 35 tical isomers (CAS No. 14838-15-4);  
 36 (15) piperidine and its salts (CAS No. 110-89-4);  
 37 (16) pseudoephedrine, its salts, optical isomers, and salts of optical  
 38 isomers (CAS No. 90-82-4);  
 39 (17) red phosphorous (CAS No. 7723-14-0);  
 40 (18) sodium (CAS No. 7440-23-5); and  
 41 (19) thionylchloride (CAS No. 7719-09-7);  
 42 (n) "regulated chemical distributor" means any person subject to the  
 43 provisions of the Kansas chemical control act who manufactures or dis-

, except products containing ephedra or ma  
 huang, which do not contain any chemically  
 synthesized ephedrine alkaloids, and are  
 lawfully marketed as dietary supplements under  
 federal law

{Dietary Supplement Safety and Science  
 Coalition}

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1 tributes a regulated chemical;

2 (o) "regulated chemical retailer" means any person who sells regu-

3 lated chemicals directly to the public;

4 (p) "regulated chemical transaction" means the manufacture of a regu-  
5 lated chemical or the distribution, sale, exchange or other transfer of a  
6 regulated chemical within ~~into~~ ~~or out of the~~ state; and

{or

7 (q) "secretary" means the secretary of health and environment.

{the state or from this state into another

{Nonprescription Drug Manufacturers Association (NDMA)}

8 New Sec. 14. ~~(a)~~ The provisions of this act shall not apply to: (1) A  
9 distribution of a regulated chemical to or by a common or contract carrier  
10 for carriage in the lawful and usual course of the business of the common  
11 or contract carrier, or to or by a warehouseman for storage in the lawful  
12 and usual course of the business of the warehouseman;

13 (2) the lawful administering or dispensing of a regulated chemical by  
14 a licensed physician, dentist, or veterinarian in the course of professional  
15 practice or research;

16 (3) the lawful dispensing of a regulated chemical that is a controlled  
17 substance by a pharmacist in the course of professional practice; ~~or~~

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

{; or

{(5) products containing ephedra or ma haung, which do not contain any chemically synthesized ephedrine alkaloids, and are lawfully marketed as dietary supplements under federal law

23 ~~(b) The registration, recordkeeping and reporting requirements con-~~  
24 ~~tained in sections 17, subsections (a) and (b) of 19 and 20 and amend-~~  
25 ~~ments thereto shall not apply to a regulated chemical retailer who only~~  
26 ~~sells or distributes regulated chemicals that are nonprescription, over-~~  
27 ~~the-counter medicines with less than three grams of base ingredient in~~  
28 ~~the package in the following manner:~~

{Dietary Supplement Safety and Science Coalition}

29 (1) Blister packs of not more than two dosage units per blister;

30 (2) liquid cold or cough medicines;

31 (3) liquid cold or cough gel capsules; and

32 ~~(4) nasal drops or sprays.~~

{Moved to section 20}

33 New Sec. 15. (a) The secretary is authorized and directed to: (1)  
34 Adopt such rules and regulations, standards and procedures as may be  
35 necessary to carry out the purposes and provisions of this act;

36 (2) expend and authorize the expenditure of moneys from the chem-  
37 ical control act fund;

38 (3) report to the legislature on further assistance needed to admin-  
39 ister the chemical control program;

40 (4) administer the chemical control program pursuant to provisions  
41 of this act;

42 (5) cooperate with appropriate federal, state, interstate and local units  
43 of government and with appropriate private organizations in carrying out

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- 1 the duties under this act;
- 2 (6) issue such ~~registrations and~~ orders necessary to implement the
- 3 provisions of this act, and enforce the same by all appropriate adminis-
- 4 trative and judicial proceedings;
- 5 (7) collect and disseminate information and conduct educational and
- 6 training programs relating to the chemical control program;
- 7 (8) accept, receive and administer grants or other funds or gifts from
- 8 public and private entities, including the federal government, for the pur-
- 9 pose of carrying out the provisions of this act;
- 10 (9) enter into contracts and agreements with the director of the Kan-
- 11 sas bureau of investigation, other government agencies or private entities
- 12 as necessary to carry out the provisions of this act; and
- 13 (10) examine and copy records and other information.
- 14 (b) The secretary may request the attorney general to bring an action
- 15 in district court to seize property contaminated with chemicals for pur-
- 16 poses of disposal or to enforce any other provision of this act.
- 17 (c) The director is authorized to: (1) Provide investigative assistance
- 18 to the department of health and environment when requested by the
- 19 secretary or his duly authorized agent;
- 20 (2) conduct civil actions necessary to seize chemicals or chemical-
- 21 contaminated materials from alleged illegal drug manufacturing sites or
- 22 to gain access to illegal drug manufacturing sites;
- 23 (3) serve as the single point of contact for screening alleged illegal
- 24 drug manufacturing sites to determine if clean up or evaluation by a local
- 25 health officer or the secretary is necessary;
- 26 (4) serve as the contact agency for conducting any clean up action
- 27 necessary at an alleged illegal drug manufacturing site where the removal
- 28 of floors, walls, furniture or soil is not required and where the contami-
- 29 nation of groundwater has not occurred; and
- 30 (5) enter into any agreements with the secretary necessary to carry
- 31 out the provisions of this act.

32 ~~New Sec. 16. (a) The secretary may, by rules and regulations, add~~  
 33 ~~chemicals to or delete chemicals from the list of regulated chemicals in~~  
 34 ~~subsection (m) of section 13 and amendments thereto. In determining~~  
 35 ~~whether to add or delete a chemical, the secretary shall consider the~~  
 36 ~~following: (1) Whether the chemical is already controlled under the uni-~~  
 37 ~~form controlled substances act;~~  
 38 ~~(2) the availability of the chemical for potential illegal diversion;~~  
 39 ~~(3) the historical, actual, or potential use of the chemical in the illegal~~  
 40 ~~production of a substance controlled under the uniform controlled sub-~~  
 41 ~~stances act, including the scope, duration and significance of use;~~  
 42 ~~(4) the nature and extent of the legitimate uses of the chemical;~~

New Sec. 14. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product as a precursor to any illegal substance.

(b) It shall be unlawful for any person to market, sell, distribute, advertise, or label any drug product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product as a precursor to any illegal substance.

(c) It shall be unlawful for any person to market, sell, distribute, advertise or label any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(d) A violation of this section shall be a drug severity level 1 felony.

{NDMA}

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1 ~~tribution of the chemical, and~~  
2 (6) any other factors relevant to and consistent with public health and  
3 safety.  
4 (b) A manufacturer may apply to the secretary for an exemption of a  
5 drug product containing a regulated chemical from the provisions of this  
6 act on a form which the secretary shall furnish upon request. The sec-  
7 retary shall grant the exemption upon a finding that the applicant has  
8 shown by a preponderance of the evidence that the drug product is man-  
9 ufactured and distributed in a manner which prevents its illegal diversion.  
10 In making the finding, the secretary shall consider: (1) Evidence of illegal  
11 diversion of the drug product, including the scope, duration and signifi-  
12 cance of the diversion;  
13 (2) whether the drug product is formulated in such a way that it  
14 cannot be easily used in the illegal production of a drug;  
15 (3) whether the regulated chemical can be readily recovered from  
16 the drug product;  
17 (4) the manner of packaging the drug product, including the package  
18 sizes;  
19 (5) the manner of distribution and advertising of the drug product by  
20 the manufacturer and others;  
21 (6) any specific actions taken by the manufacturer to prevent illegal  
22 diversion of the drug product; and  
23 (7) any other factors which are relevant to and consistent with public  
24 health and safety.  
25 (c) The secretary shall grant or deny an exemption in accordance with  
26 the Kansas administrative procedure act.  
27 (d) (1) A drug product that is lawfully marketed in this state on the  
28 effective date of this act for which a manufacturer has filed a request  
29 under this subsection no later than 60 days after the effective date of this  
30 act may continue to be lawfully marketed during the pendency of the  
31 request; and shall be deemed in compliance with this act: (A) During the  
32 pendency of the request; and  
33 (B) for the 60 days after denial of the exemption, unless the denial  
34 was based on a finding that the drug product is being illegally diverted.  
35 (2) The manufacturer shall file a request under this subsection no  
36 later than 60 days from the effective date of this act.  
37 (e) Applications pursuant to subsection (d) that involve a drug prod-  
38 uct for which an exemption was previously denied may be made only if  
39 there is a significant change in the data which led to the denial.  
40 (f) The secretary may modify or remove an exemption upon a finding:  
41 (1) That the drug product is being illegally diverted; or  
42 (2) That there is a significant change in the data which led to the  
43 granting of the exemption. In making a finding, the secretary shall con

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1 ~~consider the factors listed in subsection (d)~~  
2 ~~(g) If any chemical is designated or deleted as a listed chemical under~~  
3 ~~the provisions of the federal controlled substances act, the secretary may~~  
4 ~~by rules and regulations similarly add or delete a chemical as a regulated~~  
5 ~~chemical without making the determination required under subsection~~  
6 ~~(a).~~  
7 ~~New Sec. 17. Each regulated chemical distributor or retailer in ex-~~  
8 ~~istence on the effective date of this act shall register with the secretary~~  
9 ~~by January 1, 2000. Any other regulated chemical distributor or retailer~~  
10 ~~shall register with the secretary within 30 calendar days after starting~~  
11 ~~operations. The application for registration shall be submitted on a form~~  
12 ~~provided by the secretary and provide such information as the secretary~~  
13 ~~shall require.~~  
14 ~~(a) A person is ineligible to apply for registration if the person: (1) Is~~  
15 ~~an individual less than 18 years of age or a business in which an individual~~  
16 ~~under 18 years of age is in the capacity of owner, partner, corporate~~  
17 ~~officer, manager, agent or representative;~~  
18 ~~(2) has been convicted of a felony violation of federal or state law, or~~  
19 ~~the law of another country, or a federal or state misdemeanor violation~~  
20 ~~involving a controlled substance, controlled substance analog or a chem-~~  
21 ~~ical subject to regulation; or~~  
22 ~~(3) has had a federal or state registration, or a registration from an-~~  
23 ~~other country, to manufacture, distribute, dispense or possess controlled~~  
24 ~~substances or any chemical subject to regulation denied, suspended or~~  
25 ~~revoked.~~  
26 ~~(b) The secretary shall register an applicant unless the secretary de-~~  
27 ~~termines that the registration shall be denied in accordance with subsec-~~  
28 ~~tion (a) of section 18 and amendments thereto.~~  
29 ~~(c) A separate registration is required for each principal place of busi-~~  
30 ~~ness or professional practice of the regulated chemical distributor or~~  
31 ~~retailer.~~  
32 ~~(d) A regulated chemical distributor or retailer shall notify the sec-~~  
33 ~~retary of any change in business name, contact person, address, zip code,~~  
34 ~~and telephone number, no later than 30 calendar days after the change.~~  
35 ~~(e) No registration shall be assigned or otherwise transferred.~~  
36 ~~(f) The secretary shall suspend or revoke a registration in accordance~~  
37 ~~with the Kansas administrative procedures act.~~  
38 ~~(g) An applicant or registrant, shall notify the secretary of any change~~  
39 ~~in status regarding the conditions listed in this section or in section 18~~  
40 ~~and amendments thereto no later than 30 calendar days after the change.~~  
41 ~~New Sec. 18. (a) The secretary may deny, suspend, or revoke a reg-~~  
42 ~~istration, pursuant to the Kansas administrative procedure act, K.S.A. 17-~~  
43 ~~501 et seq and amendments thereto upon finding that the applicant or~~

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1 registrant: (1) Has failed to make timely and sufficient application to the  
2 secretary;

3 (2) has violated any rule and regulation of the secretary or any pro-  
4 vision of this act;

5 (3) has failed to maintain effective controls against diversion of reg-  
6 ulated chemicals into other than legitimate medical, scientific, research  
7 or industrial channels;

8 (4) has materially falsified or omitted material information from any  
9 application, record, report, inventory or other document required to be  
10 kept or filed under this act or any applicable rule and regulation; or

11 (5) has committed such acts as would render the person's registration  
12 or permit inconsistent with the public interest as determined by the  
13 secretary.

14 (b) The secretary shall provide the Kansas bureau of investigation the  
15 name, address and phone number of any person whose registration has  
16 been denied, suspended or revoked under this section.

17 New Sec. 19. Each regulated chemical distributor and retailer shall  
18 maintain the following records regarding regulated chemical transactions  
19 in a legible and accurate manner. These records shall be maintained be-  
20 ginning January 1, 2000.

21 (a) Each regulated chemical distributor shall maintain a record of  
22 each regulated chemical transaction in which it engages. The records shall  
23 include: (1) The date of the regulated chemical transaction;

24 (2) the identity of each party to the transaction;

25 (3) a statement of the quantity and form of the regulated chemical;  
26 and

27 (4) the registration number for each party to the transaction for those  
28 persons required to be registered under section 17 and amendments  
29 thereto.

30 (b) Each regulated chemical retailer shall maintain records of all pur-  
31 chases of regulated chemicals. The records shall include: (1) The name  
32 of the regulated chemicals purchased;

33 (2) the identities of each person from whom regulated chemicals  
34 were purchased;

35 (3) a statement of the quantity and form of the regulated chemical;  
36 and

37 (4) the registration number for each party from whom regulated  
38 chemicals were purchased.

39 (c) Each regulated chemical retailer shall maintain records of all retail  
40 sales and other distributions of more than 24 grams of any regulated  
41 chemical in a single transaction. The records shall include: (1) The name  
42 and quantity of the regulated chemical purchased;

43 (2) the name and address of the person purchasing the regulated

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1 ~~[chemical]~~

2 ~~[(3) an identification number from a current and valid driver's license~~  
3 ~~or other official state issued identification containing a photograph of the~~  
4 ~~individual purchaser;~~

5 ~~(4) a statement of the intended usage of the regulated chemical;~~  
6 ~~(5) the date of the purchase; and~~  
7 ~~(6) the signature of the person purchasing the regulated chemical.~~

8 ~~(d) All records required to be maintained under this section shall be~~  
9 ~~retained for two years and shall be available for inspection and copying~~  
10 ~~at the controlled premises.]~~

[(a)]

11 ~~New Sec. 20. Each regulated chemical distributor and retailer [sub-~~  
12 ~~ject to the registration requirements contained in section 17 and amend-~~  
13 ~~ments thereto shall submit to the secretary on or before February 1 of~~  
14 ~~each year an annual report summarizing regulated chemical transactions~~  
15 ~~for the preceding calendar year. The first such reports shall be due Feb-~~  
16 ~~ruary 1, 2001, and shall be submitted on forms or in digital format pro-~~  
17 ~~vided by the secretary.~~

18 ~~(a) Each regulated chemical distributor shall submit the following~~  
19 ~~information:~~

20 ~~(1) The name and total quantity of each regulated chemical pur-~~  
21 ~~chased, sold or otherwise distributed during the previous calendar year;~~  
22 ~~(2) the identity of each party engaging in transaction of regulated~~  
23 ~~chemicals; and~~  
24 ~~(3) the registration number for each party to the transaction.~~

25 ~~(b) Each regulated chemical retailer shall submit the following~~  
26 ~~information:~~

27 ~~(1) The name, quantity and form of the regulated chemicals pur-~~  
28 ~~chased during the previous calendar year; and~~  
29 ~~(2) the identities and registration number of each person from whom~~  
30 ~~regulated chemicals were purchased.~~

31 ~~(c) All registrants shall submit to the secretary any change in status,~~  
32 ~~including business name, contact person, address, zip code, and tele-~~  
33 ~~phone number.~~

34 ~~(d) Upon request of the secretary of the department of health and~~  
35 ~~environment or the director of the Kansas bureau of investigation, any~~  
36 ~~person required to register and maintain records pursuant to sections 17~~  
37 ~~and 19 and amendments thereto, shall prepare and submit a report con-~~  
38 ~~taining the requested information regarding regulated chemical pur-~~

[[Insert New Sec. 20, see attached.]]

39 ~~chases, sales or other distributions within 15 calendar days.]~~

40 ~~New Sec. 21. Any order [or disapproval] of the secretary issued pur-~~  
41 ~~suant to this act is subject to the provisions of the Kansas administrative~~  
42 ~~procedure act.~~

[(a)]

43 ~~[(c) Any person to whom an order, disapproval, or a denial, suspension]~~

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shall submit to the bureau:

(1) Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that may indicate that the listed chemical will be used in violation of this act.

(2) Any proposed regulated transaction with a person whose description or other identifying characteristic the bureau has previously furnished to the regulated chemical distributor or retailer.

(3) Any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated chemical distributor or retailer. The regulated person responsible for reporting a loss in-transit is the distributor.

(b) Each report submitted pursuant to subsection (a), whenever possible shall be made orally to the bureau at the earliest practicable opportunity after the regulated chemical distributor or retailer becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. Written reports of these transactions shall subsequently be filed within 15 days after the regulated chemical distributor or retailer becomes aware of the circumstances of the event. A transaction may not be completed with a person whose description or identifying characteristics have previously been furnished to the regulated distributor by the bureau unless the transaction is approved by the bureau.

(c) This section shall not apply to any of the following:

(1) Any pharmacist, pharmacy or other authorized person who sells or furnishes a substance listed in subsection (m) of section 13 and amendments thereto upon the prescription or order of a practitioner as defined under subsection (x) of K.S.A. 65-1626 and amendments thereto;

(2) any practitioner as defined under subsection (x) of K.S.A. 65-1626 and amendments thereto who administers, dispenses or furnishes a substance listed in subsection (m) of section 13 and amendments thereto to such patients within the scope of a practitioner's professional practice. Such administration or dispensing shall be in the patient record;

(3) any sale, transfer, furnishing or receipt of any drug which contains any substance listed in subsection (m) of section 13 and amendments thereto and which is lawfully sold, transferred or furnished over-the-counter without a prescription pursuant to the federal food, drug and cosmetic act or regulations adopted thereunder; and

(4) a regulated chemical retailer who only sells or distributes regulated chemicals that are nonprescription, over-the-counter medicines with less than three grams of base ingredient in the package in the following manner:

- (A) Blister packs of not more than two dosage units per blister;
- (B) liquid cold or cough medicines;
- (C) liquid cold or cough gel capsules; and
- (D) nasal drops or sprays.

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1 ~~tion, or revocation of a registration has been issued may appeal in writing~~  
 2 ~~to the secretary within 15 days of service of such order or disapproval. If~~  
 3 ~~appealed, a hearing shall be conducted in accordance with the Kansas~~  
 4 ~~administrative procedure act.~~

5 (b) Any final action of the secretary pursuant to this section is subject  
 6 to review in accordance with the act for judicial review and civil enforce-  
 7 ment of agency actions.

8 New Sec. 22. (a) It shall be unlawful for a regulated chemical dis-  
 9 tributor or retailer to:

10 (1) Engage in a regulated chemical transaction without a registration  
 11 issued under section 17 and amendments thereto or in a manner not  
 12 authorized by the registration;

13 (2) use a registration number which is altered, fraudulent, fictitious,  
 14 revoked or suspended;

15 (3) fail to maintain proper records as required by section 19 and  
 16 amendments thereto;

17 (4) fail to submit any report to the secretary or director as required  
 18 by section 20 and amendments thereto; or

19 (5) violate any other provision of this act or any rules and regulations  
 20 adopted pursuant to this act.

21 (b) It shall be unlawful for any person to: (1) Acquire or obtain, or  
 22 attempt to acquire or obtain, possession of a regulated chemical by ma-  
 23 terial misrepresentation, fraud or deception or from anyone other than a  
 24 regulated chemical distributor properly registered under section 17 and  
 25 amendments thereto;

26 (2) acquire or obtain, or attempt to acquire or obtain, possession of  
 27 a regulated chemical from anyone other than a regulated chemical dis-  
 28 tributor properly registered under section 17 and amendments thereto;

29 (3) move or distribute a regulated chemical to a location other than  
 30 that identified in the registration issued under section 17 and amend-  
 31 ments thereto;

32 (4) fail to present identification, or to present false or fraudulent iden-  
 33 tification when identification is required by section 19 and amendments  
 34 thereto;

35 (5) knowingly or intentionally furnish false or fraudulent material in-  
 36 formation in, or knowingly or intentionally omit any material information  
 37 from, any application, report, record, or other document required to be  
 38 kept or filed under this act or any applicable rule and regulation;

39 (6) possess a regulated chemical in violation of the provisions of this  
 40 act or any rules and regulations adopted pursuant to this act; or

41 (7) refuse entry into controlled premises for any inspection author-  
 42 ized by this act.

43 (c) It shall be unlawful for a regulated chemical retailer to sell or

{NDMA, unlawful acts, see section 14, page 16}

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~~distribute in any single transaction more than two consumer packages~~  
 containing any of the following regulated chemicals:

(1) Ephedrine, its salts, optical isomers and salts of optical isomers;  
 (2) phenylpropanolamine, its salts, optical isomers, and salts of optical isomers; and

(3) pseudoephedrine, its salts, optical isomers, and salts of optical isomers. This subsection shall not apply to sales or distributions from one regulated chemical retailer to another regulated chemical retailer.

(d) A person who commits an offense described in subsections (a)(1) through (3) and (b)(1) through (6) is guilty of a severity level 9, nonperson felony.

(e) A person who commits an offense described in subsections (a)(4) through (5), (b)(7) and (c) which is not otherwise considered a felony ~~under subsection (d) is guilty of a class B nonperson misdemeanor.~~

New Sec. 23. (a) The secretary of the department of health and environment or the director of the division of environment, if designated by the secretary, upon a finding that a person has violated any provision of this act may impose a penalty not to exceed \$25,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment, if designated by the secretary, to the person who committed the violation. The order shall state the violation, the penalty to be imposed and the right to appeal to the secretary for a hearing thereon. Any person may appeal an order by making a written request to the secretary for a hearing within 15 days of service of such order. Proceedings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Any sum assessed under this section shall be deposited in the chemical control fund.

(d) Any final action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

New Sec. 24. (a) A person who violates any provisions of this act, shall, in addition to any other penalty provided by law, be liable for detection and investigation costs, the costs of the actual cleanup or attempted cleanup and for damages for injury to, or both, or destruction of any natural resources caused by chemicals at the site

(b) A civil action under this section may be commenced in the name of the state by the attorney general in the county in which the violation

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is alleged to have occurred.

2 (c) Any sum assessed under this section shall be deposited in the  
3 chemical control fund.

4 New Sec. 25. (a) There is established a fund in the treasury entitled  
5 the chemical control fund.

6 (b) Revenues from the following sources shall be deposited in the  
7 state treasury and credited to the fund: (1) moneys received by the sec-  
8 retary in the form of grants, gifts, bequests, reimbursements, or appro-  
9 priations from any source intended to be used for the purposes of the  
10 fund;

11 (2) interest attributable to the investment of moneys in the fund; and

12 (3) moneys collected under sections 23 and 24 and amendments  
thereto.

13 (c) Moneys in the chemical control fund can only be expended di-  
14 rectly or through contracts for the costs of: (1) Administration and en-  
15 forcement of the provisions of this act;

16 (2) contracting for services needed to supplement the department's  
17 staff in alleged illegal drug manufacturing site clean ups;

18 (3) consultation needed concerning alleged illegal drug manufactur-  
19 ing site clean ups;

20 (4) activities to address immediate or emergency threats to human  
21 health or the environment related to alleged illegal drug manufacturing  
22 sites; and

23 (5) development of educational materials and programs for informing  
24 the regulated community and the public about illegal drug manufacturing  
25 issues.

26 (d) On or before the 10th of each month following the month in  
27 which moneys are deposited into the chemical control fund, and there-  
28 after on or before the 10th of each month, the director of accounts and  
29 reports shall transfer from the state general fund to the chemical control  
30 fund interest earnings based upon: (1) The average daily balance of mon-  
31 eys in the chemical control fund for the preceding month; and

32 (2) the net earnings rate of the pooled money investment portfolio  
33 for the preceding month.

34 (e) All expenditures from the fund shall be made in accordance with  
35 appropriation acts upon warrants of the director of accounts and reports  
36 issued pursuant to vouchers approved by the secretary for the purposes  
37 set forth in this section.

38 (f) Moneys from the fund shall not supplant any other local, state or  
39 federal funds.

40 New Sec. 26. (a) The secretary is authorized to: (1) Develop a con-  
41 tract with a hazardous waste response contractor for joint use by the  
Department of Health and Environment and the Bureau of

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1 investigation to conduct investigation and clean up of chemicals, chemi-  
2 cal-contaminated materials, soil, or groundwater resulting from a poten-  
3 tial illegal drug manufacturing site or from an arrest made pursuant to  
4 the provisions of this act;

5 (2) authorize any person to carry out any clean up action in accord-  
6 ance with the directions or requirements of the secretary, if the secretary  
7 determines that the person will commence and complete the clean up  
8 properly and in a timely manner;

9 (3) undertake directly or by contract any cleanup action necessary at  
10 an alleged illegal drug manufacturing site including the cleanup, storage  
11 and disposal of chemicals and chemical contaminated materials located  
12 at an alleged illegal drug manufacturing site;

13 (4) to abate any imminent and substantial danger to the public health,  
14 safety or the environment related to a release from an illegal drug man-  
15 ufacturing site;

16 (5) direct or authorize a person responsible for creating an illegal  
17 drug manufacturing site as defined in subsection (b) to conduct a clean  
18 up or perform any related actions;

19 (6) recover moneys expended by the state responding to alleged il-  
20 legal drug manufacturing sites from persons responsible for creating such  
21 sites;

22 (7) examine and copy records and other information;

23 (8) enter into any agreements with the director necessary to carry out  
24 the provisions of this act, and

25 (9) request the attorney general to bring an action in any district court  
26 to seize property contaminated with chemicals for purposes of clean up,  
27 disposal or to enforce any other provision of this act.

28 (b) The following persons shall be considered responsible for creating  
29 an alleged illegal drug manufacturing site and shall be jointly and sever-  
30 ably liable for those cleanup costs incurred by the state and for damages  
31 for injury to or destruction of any natural resources caused by chemicals  
32 at the site: (1) Any person operating an alleged illegal drug manufacturing  
33 site;

34 (2) any owner of an alleged illegal drug manufacturing site,

35 (3) any owner or operator of an alleged illegal drug manufacturing  
36 site who obtained actual knowledge of the alleged illegal drug manufac-  
37 turing site or damages caused by the site who failed to contact appropriate  
38 federal, state or local law enforcement authorities regarding the presence  
39 of the site;

40 (4) any person who, by any acts or omissions, caused or contributed  
41 to the alleged illegal drug manufacturing site, unless the acts or omissions  
42 were in material compliance with applicable laws, standards, regulations,  
43

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(5) any person who unlawfully hinders or delays entry to, investigation of or clean up action at a site.

(c) Except as otherwise provided in subsection (d), the following persons shall not be considered responsible for creating an alleged illegal drug manufacturing site and shall not be liable for those cleanup costs incurred by the state: (1) Any owner or operator who became the owner or operator after the creation of the alleged illegal drug manufacturing site who did not know and reasonably should not have known of the damages when the person first became the owner or operator;

(2) a unit of state or local government that acquired ownership or control of a site by virtue of tax delinquency, abandonment, exercise of eminent domain authority, forfeiture, purchase or condemnation;

(3) any person who is not otherwise responsible under subsection (b) who acquired a site by inheritance or bequest; ~~and~~

(4) a local government as a result of actions taken in response to an emergency created by the chemicals at or generated by or from an alleged illegal drug manufacturing site owned by another person.

(d) Notwithstanding the exclusions provided in subsection (c) of this section, such persons shall be liable for cleanup costs incurred by the state to the extent that the person's acts or omissions constituted gross negligence or intentional misconduct.

(e) If any person who is liable under subsection (b) of this section fails without sufficient cause to conduct a cleanup action as required by an order of the secretary, the person shall be liable for the state's cleanup costs.

(f) A local health officer, upon notification by the department or the bureau of the existence of an alleged illegal drug manufacturing site, is authorized to cause an inspection of the property to be conducted to determine the extent of contamination. In those cases where the local health officer does not have the resources or expertise to conduct such an inspection, the secretary is authorized to conduct the inspection.

(g) If the local health officer or the secretary determines that the property where the alleged illegal drug manufacturing site exists is unfit for use due to the extent of contamination, the local health officer or the secretary is empowered to post an order prohibiting use of all or portions of the property. The posting shall be in a conspicuous place on the property.

(h) In those cases where a person responsible for creating an alleged illegal drug manufacturing site fails to conduct a clean up of the site within 60 days of discovery of the site by federal, state or local law enforcement officials, the secretary is authorized to record, in accordance with Kansas law, a notice with the county register of deeds where the property is located that the land has been used to manufacture illegal drugs and that

; and

(5) manufacture's, distributors, and retailers who are registered with the state board of pharmacy and acted or failed to act without knowledge of the existence of an illegal drug manufacturing site or without the intent to furnish supplies to an illegal drug manufacturing site

{ NDMA }

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1 the property contains chemical contamination that may be harmful to the  
2 public health, safety or the environment. A notice of release shall be filed  
3 upon a showing to the department that the property is no longer harmful  
4 to the public health, safety and the environment.

5 (i) Notwithstanding any other provision of law, the State of Kansas,  
6 the department of health and environment and the Kansas bureau of  
7 investigation and their officers, employees and agents shall not be liable  
8 to a person possessing or owning chemicals located at an alleged illegal  
9 drug manufacturing site for any claims or actions arising from the iden-  
10 tification, cleanup, storage or disposal of such chemicals by the  
11 department.

12 ~~§ 27. (a) The secretary, the secretary's designee, or a local~~  
13 ~~state or federal officer empowered by law to conduct investigations of or~~  
14 ~~to make arrests for drug law offenses, is authorized to conduct adminis-~~  
15 ~~trative inspections of controlled premises in accordance with the require-~~  
16 ~~ments of this section.~~

17 (b) The secretary's designee, or any law enforcement officer, may  
18 inspect controlled premises after making a demand to conduct an in-  
19 spection and presenting appropriate credentials to any person identified  
20 in an application submitted under section 17 and amendments thereto,  
21 or if no such person is present or readily available to any person present  
22 at the controlled premises.

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

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

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

33 (d) (1) Any authorized officer, employee or agent of the department  
34 or any person under contract with the department may enter onto the  
35 premises of any alleged illegal drug manufacturing site, at reasonable  
36 times to review information, inspect, examine or gather data, conduct  
37 investigations, take remedial or other action where the secretary deter-  
38 mines that such action is necessary to protect the public health or the  
39 environment;

40 (2) If the person refuses to provide information, documents, records  
41 or allow entry pursuant to (d)(1), the department may request the attor-  
42 ney general to obtain an order allowing entry for the purposes stated in  
43 ~~the statute.~~

(1)

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2 New Sec. 28. (a) In addition to procedures provided in section 27  
3 and amendments thereto and subsection (e), a district court judge or  
4 magistrate within the judge's or magistrate's jurisdiction, and upon proper  
5 oath or affirmation showing probable cause, may issue warrants to con-  
6 duct administrative inspections and seize property as authorized by this  
7 act. For the purpose of issuance of an administrative inspection warrant,  
8 probable cause exists upon a showing of a valid public interest in the  
9 effective enforcement of this act, or rules and regulations adopted under  
10 this act, sufficient to justify administrative inspection of the area, prem-  
11 ises, building or conveyance in the circumstances specified in the appli-  
12 cation for the warrant.

13 (b) A warrant shall be issued only upon an affidavit of the secretary,  
14 the secretary's designee, or a local, state or federal officer, sworn to before  
15 the judge or magistrate, and establishing grounds for issuing the warrant.  
16 If the judge or magistrate is satisfied that grounds for the application exist  
17 or that there is probable cause to believe they exist, the judge or magis-  
18 trate shall issue a warrant identifying the area, the conveyance, the build-  
19 ing or other premises to be inspected, the purpose of the inspection, and,  
20 if appropriate, the type of property to be inspected, if any.

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

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

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

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

29 (5) allow the sale or destruction of regulated chemicals or equipment  
30 if appropriate and the deposit of the proceeds of any sale in the chemical  
31 control fund; and

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

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

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1 ~~possession or premises the property was taken, if present, or in the pres-~~  
2 ~~ence of at least one credible person other than the person serving the~~  
3 ~~warrant. A copy of the inventory shall be delivered to the person from~~  
4 ~~whom or from whose premises the property was taken and to the appli-~~  
5 ~~cant for the warrant.~~

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

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

12 New Sec. 29. (a) All regulated chemicals which have been or are  
13 intended to be manufactured, provided, sold, furnished, transferred, de-  
14 livered, or possessed in violation of this act shall be deemed contraband,  
15 and may be seized and summarily forfeited to the state.

16 (b) A violation of this act shall constitute conduct giving rise to for-  
17 feiture pursuant to the Kansas standard asset forfeiture act K.S.A. 60-  
18 4101 *et seq.* and amendments thereto.

19 New Sec. 30. If any provisions of this act or its application to any  
20 person or circumstances are held invalid, the invalidity shall not affect  
21 other provisions or applications of this act which can be given effect with-  
22 out the invalid provision or application, and to this end the provisions of  
23 this act are severable.

24 Sec. 31. K.S.A. 1998 Supp. 21-4201, ~~21-4706~~ 22-2512, 65-4101, 65-  
25 4152, 65-4159, ~~65-4161 and 65-4163~~ are hereby repealed.

26 Sec. 32. This act shall take effect and be in force from and after its  
27 publication in the statute book.

21-4705,

and

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Sec. 2. K.S.A. 1998 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

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SENTENCING RANGE - DRUG OFFENSES

Category	A		B		C		D		E		F		G		H		I	
Severity Level	1 - Person Felonies		2 Person Felonies		1 Person & 1 Nonperson Felonies		1 Felony		3 + Nonperson Felonies		2 Nonperson Felonies		1 Nonperson Felony		2+ Misdemeanors		1 Misdemeanor or More	
I	204	194	196	186	187	178	179	170	176	162	167	158	162	154	161	150	154	146
II	83	78	77	73	72	68	68	64	62	54	59	56	57	54	54	51	49	46
III	51	49	47	44	42	40	36	34	32	32	28	26	24	24	20	18	18	18
IV	42	40	36	34	32	30	26	24	22	20	18	16	15	14	14	13	12	11

LEAD
Presumptive Probation
Presumptive Imprisonment

21-4705

CRIMES AND PUNISHMENTS

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(b) The provisions of subsection (a) apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense

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is classified ( ) a grid block above the di ( ) itional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not be subject to appeal.

(e) The sentence for a second or subsequent offense pursuant to subsection (b) (2) of K.S.A. 65-4159, and amendments thereto, shall be double the maximum duration of the presumptive imprisonment term.

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