

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:34 a.m. on February 22, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Senator Lynn Jenkins  
Melissa Wangemann, Office of Secretary of State (SOS)  
Rose Rozmiarek, Office of the State Fire Marshal  
Kyle Smith, Kansas Bureau of Investigation (KBI)  
Marlee Carpenter, Kansas Chamber of Commerce and Industry (KCCI)  
Nancy Bukar, Consumer Healthcare Products' Association (CHPA)

Others attending: see attached list

The minutes of the February 21<sup>st</sup>, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

**SB 552—civil procedure; concerning child support**

Conferee Senator Jenkins testified in support of **SB 552**, a bill which would extend child support through college years upon request by one of the parents or the child. She discussed her purpose for introducing this bill and provided a detailed description of the bill's provisions.(attachment 1) Discussion followed.

**SB 524—business entities; annual report; filing of certain documents; franchise**

Conferee Wangemann testified in support of **SB 524** a bill which duplicates changes made in the amended corporate code, in the laws relating to certain business entities. She stated that the intent of the bill is to "create uniformity and consistency among all business entities that file with the Secretary of State." She presented a detailed discussion on six issues which the amendments address, discussed two further amendments attached to her written testimony and offered a third amendment which would, on pg. 2, line 4, delete the phrase "as shown by its balance sheet."(attachment 2) Discussion followed.

**SB 515—methamphetamine and other substances**

Conferee Rozmiarek testified in support of **SB 515**, a bill which establishes certain provisions regarding the manufacture of methamphetamines. She discussed Section 2 of the bill which is an amendment that adds "a fire or explosion that occurred due to the manufacturing of an illegal substance as an arson fire." She stated that this assures that investigative information in these types of cases are kept confidential.(attachment 3)

Conferee Smith testified in support **SB 515**. He briefly reviewed illegal methamphetamine production in Kansas and discussed in detail the proposals in the bill.(attachment 4)

Written testimony in support of **SB 515** was submitted by Daryl Reece, Johnson County Sheriff's Office.(attachment 5)

Conferee Carpenter testified in opposition to **SB 515**. She discussed efforts by Kansas retailers to assist state agencies in helping to curb the availability of precursor drugs and she presented an overview of a "Kansas Retailer Meth Watch Program." She stated KCCI feels that package limits should be encouraged, but not mandated by the state.(attachment 6)

Conferee Bukar testified in opposition to **SB 515** discussing, specifically, the provision to restrict the quantity of over the counter medicines that can be sold by retailers in a single transaction. She argued that the limits are misplaced, unnecessary, ineffective and unduly burdensome to merchants.(attachment 7)

Written testimony opposing **SB 515** was submitted by Bob Williams, Kansas Pharmacists Association.(attachment 8)

The meeting adjourned at 10:35 a.m. The next scheduled meeting is February 25, 2002.





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LYNN JENKINS

SENATOR, 20TH DISTRICT

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 REAPPORTIONMENT  
 LEGISLATIVE POST AUDIT  
 JOINT COMMITTEE ON  
 ECONOMIC DEVELOPMENT

*Senate Judiciary Committee*  
*February 2002*

*SB 552*

Mr. Chairman and members of the committee, thank you for the opportunity to appear today in support of Senate Bill 552. This bill was introduced at the request of a constituent of mine. It simply makes one change to the current child support provisions.

Under current law child support is generally terminated upon the child's graduation from high school. Extension of support is only available if both parents agree to it. This bill would simply allow the court to extend support through the college years, upon request by one of the parents or the child. It mandates nothing. It does, however, provide the judge the flexibility to require continued support in rare instances, if the circumstances merit it.

In today's competitive job market, higher education is becoming a near necessity. This legislature spends a great deal of time, energy, and money encouraging job training and workforce development. Be it Vo-tech school, community college, or a four year degree program, I would like to see Kansas kids have every opportunity necessary for them to be successful.

Children of divorce are occasionally used to pit adult against adult. This legislation would hopefully reduce the incidence of this by allowing a neutral third party to continue to look after the child's best interest until that young person is clearly on his or her way to a bright future.

I thank you for your time and consideration. I ask for your positive consideration of Senate Bill 552.

I'd be happy to stand for questions.

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 att 1

## CHILD SUPPORT AND EDUCATION EXPENSES PAST THE AGE OF 18

By Stephanie Walton

All state child support guidelines include an age at which financial support normally ends, but nearly all allow for deviations in certain cases. Most focus on children's college or vocational education expenses or on children who have special needs and are unlikely to become self-supporting. Frequently, state legislators build these common deviations into their guidelines.

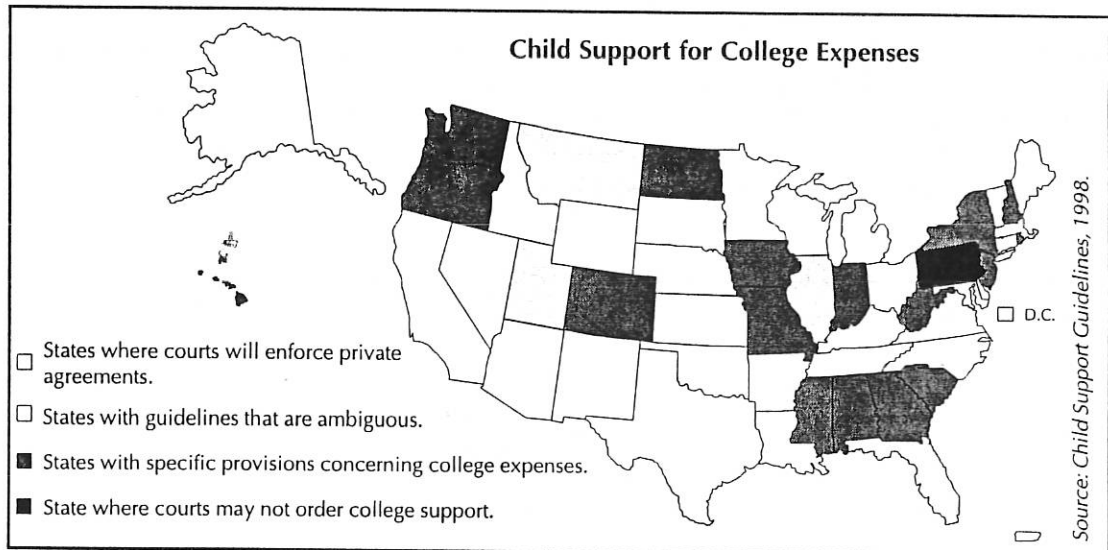
*Thirty-eight states terminate support at the age of 18 unless the child is still attending high school.*

**Termination of Support at Age of Majority.** Thirty-eight states terminate support at the age of 18 unless the child is still attending high school. Most of these states permit support until the age of 19 or graduation from high school, whichever occurs first. Georgia law permits courts to order support until the child turns 20 or completes high school. Rhode Island modified its guidelines in 1998 to provide for support to the age of 19 or 90 days past high school graduation, whichever occurs sooner.

**Child Support for Higher Education.** The U.S. Commission on Interstate Child Support recommends that state guidelines direct the courts to award child support up to age 22 if the child is enrolled in good standing at a college or vocational school. This approach grants the courts discretion in individual cases, while setting a general standard that parents can be expected to pay for higher education.

*Seventeen states make provisions specifically for higher education.*

Seventeen states make provisions specifically for higher education within their guidelines or in case law. Hawaii extends support until the age of 23 if the child is enrolled in an accredited higher education institution, and Washington's guidelines permit the court to order college support at the court's discretion. South Carolina's guidelines contain a specific list of factors for courts to consider in awarding support while a child attends college. The family court may order support for children over 18 in "exceptional circumstances," and where the



characteristics of the child indicate that: 1) she will benefit from college; 2) she demonstrates the ability to do well or make satisfactory grades; 3) she cannot otherwise go to school; and 4) the parent can afford to help pay for the child's education. In Colorado, courts may not order child support and payment for college at the same time. Colorado law allows the court to determine if it is appropriate for parents to contribute to the costs of higher education, and if so, the child support order must be terminated and both parents must be required to contribute.

Four states address higher education needs generally within their guidelines without specifying college support. In Florida, courts may require continued support if a child is "dependent," but attendance in school does not automatically mean that a child is dependent. In Massachusetts, support can be extended up to the age of 23 for a child enrolled in an "education program." Massachusetts law also requires that children reside with the custodial parent until the age of 21 in order to receive support past the age of 18. Guidelines in the District of Columbia and Utah are ambiguous in their treatment of secondary or post-secondary schooling. The District of Columbia does not end support until the age of 21, and the courts have ruled that higher education may be included in orders until the age of 21. Utah guidelines state that in divorce actions, support may be ordered until the age of 21.

Twenty-seven states have not addressed child support for higher education in their statutory or case law. These states, however, do permit courts to enforce private agreements between the parents concerning educational expenses. In Alaska, the court ruled that the state statute does not give courts the power to require support for college expenses if the child is past the age of majority, but private contracts may be enforced.

*Twenty-seven states have not addressed child support for higher education in their statutory or case law.*

**Important Court Cases.** Pennsylvania is the only state where the duty to provide college support has been found unconstitutional by the state supreme court. The Pennsylvania legislature enacted a statute in 1993 allowing courts to order that parents provide for higher education expenses if the parents are separated, divorced, unmarried or otherwise subject to an existing support obligation. In 1995, however, the Pennsylvania Supreme Court ruled that the statute violated the constitutional right to equal protection because under the law, divorced parents could be required to pay for a child's college education while married ones could not.

Similar challenges in other states have been unsuccessful. For instance, in December 1998, the Oregon Court of Appeals overturned a lower court decision that the Oregon statute allowing courts to order college support was unconstitutional because it discriminated between divorced parents and married parents. The court of appeals reversed the decision, finding that there is a rational distinction between divorced parents and married parents. The court explained that "even if most divorced or separated parents could cooperate sufficiently to decide whether to support their children attending school... there will be instances in which children will not receive support from their parents to attend school precisely because the parents are divorced or separated, despite the fact that...it is in the children's best interest for them to do so."

### **Selected References**

- Morgan, Laura W. *Child Support Guidelines, 1998 Supplement*. New York: Aspen Law and Business, 1998.
- "Termination of Child Support and Support Beyond Majority," (table on NCSL's Child Support Project Web site), <http://www.ncsl.org/programs/cyf/educate.htm>

### **Contacts for More Information**

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RON THORNBURGH  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE SENATE JUDICIARY COMMITTEE  
ON SB 524

February 22, 2002

Chairman Vratil and Members of the Committee:

The Secretary of State appreciates the introduction and hearing on SB 524, which was requested by our office.

The Kansas Bar Association and the Secretary of State worked jointly this last year to update the Kansas corporate code. A bill containing an amended corporate code has been introduced by the KBA in the house judiciary committee. The purpose of SB 524 is to duplicate changes made in the corporate code in the laws relating to all other business entities. Our intent is to create uniformity and consistency among all business entities that file with the Secretary of State. The amendments contained in the bill are outlined below.

- 1. Filing Procedures.** The Secretary of State adopted an imaging system in 2000, which replaced our paper filing system. All documents are indexed and maintained on the imaging system and therefore retention of paper documents is no longer necessary. SB 524 directs the Secretary of State to image the original paper document filed by the customer and to return the paper document to the customer as a certified copy. This new procedure reduces our storage needs while providing the customer evidence of the document that was recorded in our office. Our office has checked with the Historical Society and they are satisfied that the Secretary of State's imaging system will adequately preserve our records.
- 2. Extensions.** The current statutory language allowing business trusts, limited liability companies and limited partnerships to file an extension (which delays the filing deadline for the annual report) is contained in the corporate code. SB 524 moves these provisions to their respective acts. The corporate code also contains a provision limiting public disclosure of the IRS tax extension filed with the Secretary of State; this provision is likewise moved to the correct statutory section for LLCs, LPs and business trusts.
- 3. Definition of "doing business" for Foreign Entities.** The definition of "doing business," which determines when a foreign entity must register with the Secretary of State, is amended to reflect the definition given in the KBA corporate code revision. The new definition is based on Delaware law and the Kansas Revised Uniform Partnership Act. All foreign entities that register with our office will use this uniform definition.

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4. **Business Trust Annual Reports.** The business trust annual report still requires detailed financial disclosure, which was eliminated from all other entity annual reports in 1997. SB 524 strikes this language from the business trust annual report in order to create uniform reporting requirements among all business entities.

5. **Franchise Tax Calculation.** Business entities pay a franchise tax at the time they file their annual report with our office. The franchise tax is calculated based on net worth; \$1 for each \$1,000 in net worth. Parent entities that own net worth in subsidiaries are therefore taxed twice. SB 524 would allow a parent entity to subtract any net worth reported by the subsidiary entity before computing its franchise tax, thereby eliminating the double taxation. A subsidiary entity is defined as ownership of over 50%, based on recommendations from the Department of Revenue.

This amendment will have a fiscal impact on state general funds; therefore the committee should carefully consider this provision of the bill. The Secretary of State believes the amendment promotes fairness and equity in taxing Kansas business entities; however, we would understand if the committee decides to eliminate this provision of the bill.

The Secretary of State requests an additional amendment to SB 524, which was missed by our office when drafting the bill. The amendment, which is contained in the KBA corporate rewrite, would strike the requirement that limited partnerships include the section, range and township when listing agricultural land on the annual report. The amended language is attached to my testimony.

I appreciate the opportunity to appear today on SB 524 and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

Strike

1 (1) The number of acres and location, listed by section, range, town-  
2 ship and county of each lot, tract or parcel of agricultural land in this state  
3 owned or leased by the limited partnership; and

4 (2) whether any of the agricultural land held and reported under sub-  
5 section (c)(1) was acquired after July 1, 1981.

6 (d) The annual report shall be signed by the general partner or part-  
7 ners of the limited partnership, sworn to before an officer duly authorized  
8 to administer oaths and forwarded to the secretary of state. At the time  
9 of filing the report, the limited partnership shall pay to the secretary of  
10 state an annual franchise tax in an amount equal to \$1 for each \$1,000 of  
11 the partners' net capital accounts located in or used in this state at the  
12 end of the preceding taxable year as required to be reported on the fed-  
13 eral partnership return of income, ~~except that~~ *minus the amount of equity*  
14 *owned in any subsidiary entity reported on the subsidiary entity's annual*  
15 *report. For purposes of this subsection, "subsidiary" means an entity in*  
16 *which a limited partnership holds more than 50% ownership.* No annual  
17 tax shall be less than \$20 or more than \$2,500. The amount of any such  
18 franchise tax paid by the limited partnership to the secretary as provided  
19 by this subsection shall not be disclosed by the secretary.

20 (e) The provisions of K.S.A. 17-7509 and amendments thereto, re-  
21 lating to penalties for failure of a corporation to file an annual report or  
22 pay the required franchise tax, and the provisions of subsection (a) of  
23 K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a do-  
24 mestic corporation's articles of incorporation for failure to file an annual  
25 report or pay the required franchise tax, shall be applicable to the certifi-  
26 cate of partnership of any limited partnership which fails to file its annual  
27 report or pay the franchise tax within 90 days of the time prescribed in  
28 this section for filing and paying the same. Whenever the certificate of  
29 partnership of a limited partnership is forfeited for failure to file an annual  
30 report or to pay the required franchise tax, the limited partnership may  
31 be reinstated by filing a certificate of reinstatement, in the manner and  
32 form to be prescribed by the secretary of state and paying to the secretary  
33 of state all fees and taxes, including any penalties thereon, due to the  
34 state. The fee for filing a certificate of reinstatement shall be the same as  
35 that prescribed by K.S.A. 17-7506 and amendments thereto for filing a  
36 certificate of extension, restoration, renewal or revival of a corporation's  
37 articles of incorporation.

38 Sec. 6. K.S.A. 2001 Supp. 56-1a607 is hereby amended to read as  
39 follows: 56-1a607. (a) Every foreign limited partnership shall make an  
40 annual report in writing to the secretary of state, stating the prescribed  
41 information concerning the limited partnership at the close of business  
42 on the last day of its tax period next preceding the date of filing. If the  
43 limited partnership's tax period is other than the calendar year, it shall



1 give notice of its different tax period to the secretary of state prior to  
 2 December 31 of the year it commences the different tax period. The  
 3 annual report shall be filed at the time prescribed by law for filing the  
 4 limited partnership's annual Kansas income tax return. If the limited part-  
 5 nership applies for an extension of time for filing its annual income tax  
 6 return under the internal revenue code or under K.S.A. 79-3221 and  
 7 amendments thereto, the limited partnership shall also apply, not more  
 8 than 90 days after the due date of its annual report, to the secretary of  
 9 state for an extension of the time for filing its report and an extension  
 10 shall be granted for a period of time corresponding to that granted under  
 11 the internal revenue code or K.S.A. 79-3221 and amendments thereto.  
 12 The application shall include a copy of the application to income tax  
 13 authorities.

14 (b) The annual report shall be made on a form prescribed by the  
 15 secretary of state. The report shall contain the name of the limited  
 16 partnership.

17 (c) Every foreign limited partnership subject to the provisions of this  
 18 section which is a limited corporate partnership, as defined in K.S.A. 17-  
 19 5903 and amendments thereto, and which holds agricultural land, as de-  
 20 fined in K.S.A. 17-5903 and amendments thereto, within this state shall  
 21 show the following additional information on the report:

22 (1) The number of acres and ~~location, listed by section, range, town-~~  
 23 ~~ship and county of agricultural land in this state owned or leased by the~~  
 24 limited partnership; and

Strike

25 (2) whether any of the agricultural land held and reported under sub-  
 26 section (c)(1) was acquired after July 1, 1981.

27 (d) The annual report shall be signed by the general partner or part-  
 28 ners of the limited partnership, sworn to before an officer duly authorized  
 29 to administer oaths and forwarded to the secretary of state. At the time  
 30 of filing the report, the foreign limited partnership shall pay to the sec-  
 31 retary of state an annual franchise tax in an amount equal to \$1 for each  
 32 \$1,000 of the partners' net capital accounts located in or used in this state  
 33 at the end of the preceding taxable year as required to be reported on  
 34 the federal partnership return of income, ~~except that~~ *minus the amount*  
 35 *of equity owned in any subsidiary entity reported on the subsidiary en-*  
 36 *tity's annual report. For purposes of this subsection, "subsidiary" means*  
 37 *an entity in which a foreign limited partnership holds more than 50%*  
 38 *ownership.* No annual tax shall be less than \$20 or more than \$2,500. The  
 39 amount of any such franchise tax paid by the limited partnership to the  
 40 secretary as provided by this subsection shall not be disclosed by the  
 41 secretary.

42 (e) The provisions of K.S.A. 17-7509 and amendments thereto, re-  
 43 lating to penalties for failure of a corporation to file an annual report or



OFFICE OF THE  
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Bill Graves  
Governor

Rose M. Rozmiarek  
Kansas State Fire Marshal's Office  
Director of Investigations

Dear Senate Judiciary Committee:

I am here to speak to you as a proponent of Senate Bill 515 and more specifically on Section two of this bill. Section two is an amendment to the Kansas Arson Statute that adds a fire or explosion that occurred due to the manufacturing of an illegal substance as an arson fire.

The State Fire Investigators who are also certified law enforcement officers investigate the origin and cause of fires throughout the State of Kansas at the requests of fire or law enforcement agencies. If a fire /explosion is determined to be incendiary in nature the investigators will continue with the criminal investigation and the fire report is confidential. If a fire / explosion is determined to be accidental, as in the case of the manufacturing of an illegal substance, the investigator's case is completed and the accidental fire report is available through the Open Records Act. The suspects would have access to these reports. The availability of these reports can hamper the criminal investigation for the other law enforcement agencies that investigate the illegal manufacturing of the control substance. We need to protect this information for further criminal investigations. . These fire/explosion incidents result in approximately 2 percent of the year's total of the meth lab seizures each year and 6 percent of all the accidental fires the state investigators have worked.

The suspects in these illegal operations do not have the respect for the property for which they conduct these labs in. In most cases the suspect rents property and the landlord has no idea that this activity is occurring inside the dwelling until it has burned to the ground. Photograph number one is a house in which an elderly farmer rented to one of these suspects and unfortunately the house caught fire and burned to the ground. The farmer had to rely on the insurance to pay off on the property with no recourse against the suspect.

*"Where fire safety is a way of life."*

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Photograph number one is a house in which an elderly farmer rented to one of these suspects and unfortunately the house caught fire and burned to the ground. The farmer had to rely on the insurance to pay off on the property with no recourse against the suspect.

Of course not all of these illegal lab fire/explosions are conducted in rental property. Many are in the suspects' own homes. In these cases the insurance companies end up paying off and again with no recourses. In photograph number two; the illegal manufacturing was done in the kitchen that caught fire due to the use of the volatile chemicals used in the production. The insurance company ended up paying \$80,000 to remodel the house.

Also, the suspect(s) in these cases have no respect for the property, being their own or someone else's. They also have no respect for innocent lives involved. Photograph number three shows the doorway off the kitchen from photograph number two that leads to the bedroom of two small children who lived in the house. These children were in the house when the fire started and the suspect was more worried about his drug product than the children. The suspect was trying to save/remove the finished product and did not attempt to get the children out. The mother had to go back into the house to get the children. Fire fighters, law enforcement officers, and fire investigators are exposed to these volatile chemicals and dangerous situations. They usually do not know that the fire or explosion incident was due to the illegal manufacturing of the control substance until after the fire is over and the investigation has started.

I request your support of this bill and the amendment to the Arson Statute. People who commence to this illegal activity must be held accountable for their disregard of life and property. The fire investigators need to be allowed to fully investigate these fire/explosions without hampering other criminal investigations. We must also protect the land/property owners and innocent victims in these cases.



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# Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

**Testimony in Support of SB 515**  
Before the Senate Judiciary Committee  
Kyle G. Smith  
Kansas Bureau of Investigation  
February 22, 2002

Chairman Vratil and members of the Committee,

I am pleased to appear today on behalf of the KBI in support of SB 515. In keeping with your limited available time, I will try to represent the positions of numerous law enforcement conferees. By now I suspect you all have some familiarity with the catastrophic problems that methamphetamine is causing in our state.

The problem is enormous, deadly and growing. Methamphetamine is a potent stimulant readily abused and readily available. However it is the manufacturing process that makes this the number one public safety problem in Kansas. Untrained criminals use explosive, flammable and toxic chemicals in this process. Fires and explosions follow. The fumes and residue damage children and other innocents. Our water and soil are contaminated by the byproducts these 'cooks' dump on the ground. The resources of our law enforcement agencies are being sucked dry by the challenge of dealing with these deadly kitchens. Kansas spent over 21 million dollars in fighting meth labs last year and the problem just keeps getting worse. In 1995 Kansas law enforcement officers seized 7 meth labs. In 2000 they seized 702. Last year we seized 846. Something must be done.

SB 515 contains the best answers that we've been able to come up with, at least of the solutions that don't require massive additional resources. These proposals have been collected from law enforcement officers working the labs and in conversations with prosecutors that are dealing with this problem. They will work and they will help.

## New Section. 1.

This section limits to 3 the number of packages of methamphetamine precursor drugs that can be sold at one time. Currently there are no laws, federal or state, restricting the number of so-called 'safe harbor' packages that can be sold at retail. Do to increased efforts in controlling the importation and sale of bulk methamphetamine precursor drugs, these products are what we find in the vast majority of meth labs in Kansas.

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Everyone recognizes the legitimate uses of these drugs. But we also need recognize the need to balance of legitimate commercial needs with society's need to protect itself. Until we get control of the basic precursor's availability we will never stop the meth lab problem. 10 states have now passed such legislation. Section 1 is an almost verbatim copy of Missouri statute 195.417, passed in 2001. Three packages amount to 288 thirty-milligram tablets - enough for a family of four to all take four pills a day for over two weeks - when the package warns not to take for more than 10 days.

Last July Legislative Post Audit did an extensive Performance Audit Report on Methamphetamine labs. One of their conclusions (4a) was:

"To help ensure that law enforcement officials have the statutory provisions they need to help combat the methamphetamine problem, the House or Senate Judiciary Committees or other appropriate legislative committees should consider introducing legislation during the 2002 legislative session to do the following:  
b. increase regulation of over-the-counter drugs containing pseudoephedrine."

Report to Congress by DEA October 2001

"The evidence presented in this report will show that the original rationale for the safe harbor exemption, i.e., that blister packaging will deter traffickers, was incorrect. Therefore, DEA strongly recommends the removal of the exemption for safe harbor packaged OTC pseudoephedrine products."

Subsections (b) and (c) contain safeguards to limit the inconvenience and to protect retailers who take reasonable steps to train their employees. This language was worked out as a compromise with the various concerned industries and commercial interests in Missouri. We must control the easy availability of these precursor drugs.

## Section 2

This section amends K.S.A.21-3718, defining the crime of arson to include fires and explosions resulting from the illegal manufacture of controlled substances. Arson investigators are frustrated that so many cases turn out to be "accidental" as they were caused during a meth cook. Not only does this affect insurance companies and lien holders but the arson investigator's files become open record once it is determined to be an 'accident' - thus jeopardizing the concurrent criminal drug investigation.

As in felony murder, this section would transfer the intent from the one crime to a foreseeable, related crime.

## Section 3

Amends K.S.A. 65-4152(a)(4) to removes the specific intent requirement from the possession of anhydrous ammonia in an unapproved container statute. When we wrote this section of the drug paraphernalia law in 1999, I was under the misapprehension that



someone other than meth cooks might possess anhydrous ammonia in some other type of container. In discussing this with farmers and agricultural groups, and their growing alarm at the rise in ammonia thefts, it has become clear that this is an unnecessary element that just makes prosecution more difficult. I've also been directed to K.S.A. 2-1218, which already prohibits the sale or use of unapproved containers for anhydrous ammonia.

Once anhydrous (which means 'without water') has been exposed to the air it absorbs water and can no longer be properly called anhydrous. Meth cooks carry the product in many items, from coolers to propane tanks, so we've asked to expand the language to cover these situations where the ammonia is still pressurized but no longer anhydrous.

#### Section 4 .

This section would amend K.S.A. 65-7006 to include the other commonly found chemicals used in methamphetamine production. This statute also requires the proof beyond a reasonable doubt of the intent to use the chemical to produce a controlled substance.

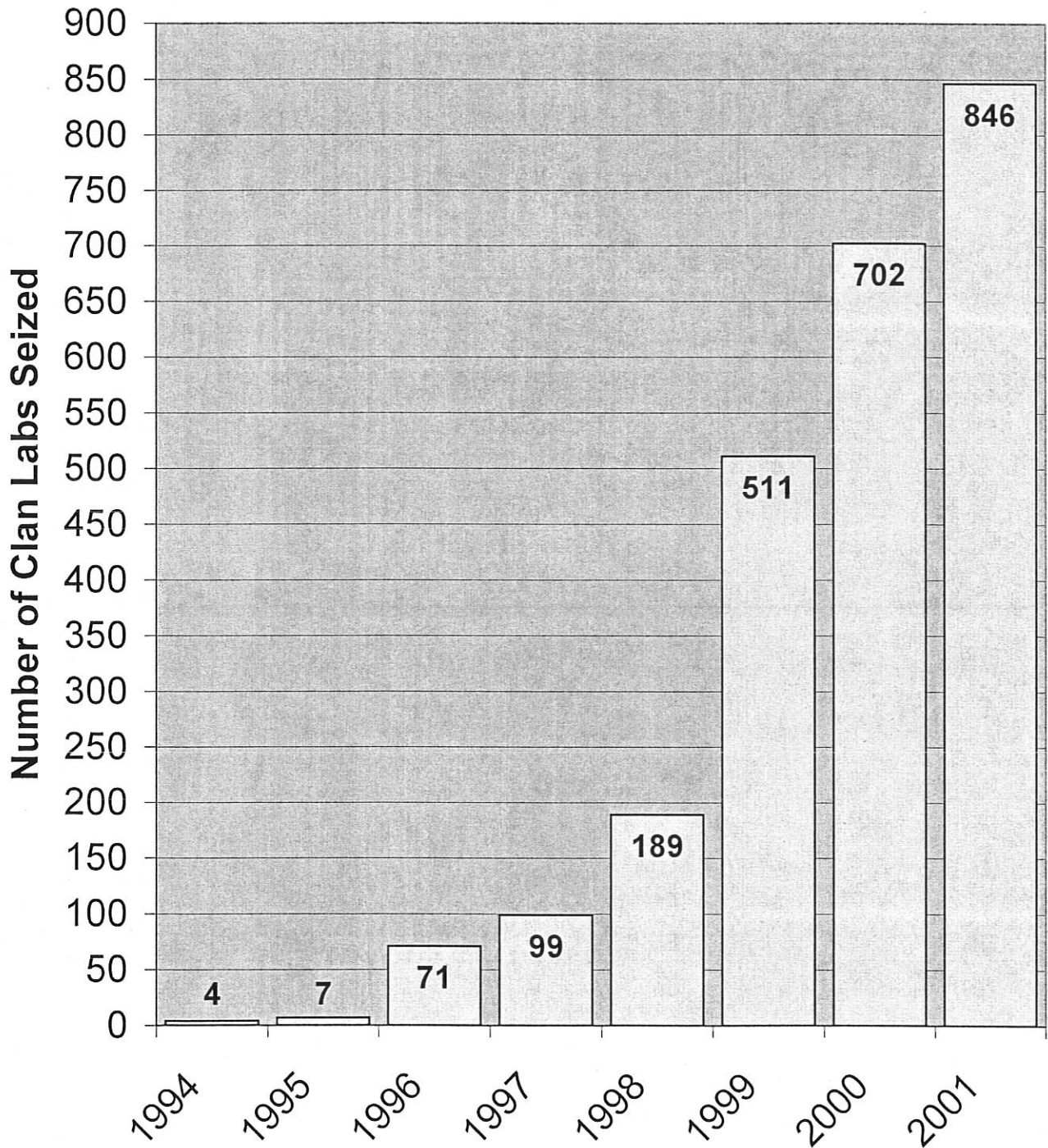
The addition of these other chemicals will allow us to address a definitional problem that prosecutors are having with the term "manufacture". If a meth cook has some, but not all, of the necessary ingredients to cook meth some cooks are convicted of attempted manufacture, while in other cases the court is finding that this is 'mere preparation', not an attempt, so the charge is reduced to possession of drug paraphernalia. That is a substantial reduction from a level 1 drug to a level 4 drug felony. The intent to manufacture is an element in both crimes, it just becomes a question of how many of the chemicals or pieces of equipment a particular judge thinks must be present before mere preparation becomes an attempt. We also hope this will cut the lab backlog, as the extensive testing necessary for drug manufacturing won't be necessary.

When I requested this legislation, I actually proposed a reduction in the sentence from a level 1 drug to a level 2 drug. My thinking was that this was better than a level 4 paraphernalia charge and would give prosecutors an easy plea to offer to those who take responsibility and waive preliminary hearing and the forensic testing of the drugs. Several prosecutors have since contacted me saying they would like to keep it as a level 1 felony. They say the threat of the severe penalties encourages plea bargains and they regularly give pleas of downward departure of 7-8 years to first offenders that cooperate.

I would request two amendments to this section; first adding the chemical 'hydrophosphorus acid' to the lists in sections (a) and (b) as we had our first 'hydro-meth' lab (using that chemical to be the catalyst and incidentally creating deadly phosgene gas as a by-product) last month and second, adding the word "illegally" between "to" and "manufacture in paragraphs (a) and (b) to remove any doubt that we are only concerned with illegal drug manufacturing.

Thank you for your attention and concern. I would be happy to answer any questions.

# Clandestine Methamphetamine Laboratories in Kansas



Source: KBI/DEA Records  
Effective Date: 12/31/01



**SENATE BILL No. 515**

By Committee on Judiciary

2-5

AN ACT concerning controlled substances; relating to methamphetamine and other substances; prohibited acts and penalties therefor; amending K.S.A. 2001 Supp. 21-3718, 65-4152 and 65-7006 and repealing the existing sections.

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

New Section 1. (a) Except as otherwise provided, no person shall deliver in any single over-the-counter sale more than three packages of any methamphetamine precursor drug or any combination of methamphetamine precursor drugs.

(b) The provisions of this section shall not apply to any product labeled pursuant to federal regulation for use only in children under 12 years of age, or to any products that the state department of health and environment, upon application of a manufacturer, exempts by rule and regulation from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

(c) Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine or phenylpropanolamine products are available for sale who violates subsection (a) shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal rules and regulations regarding ephedrine, pseudoephedrine or phenylpropanolamine.

(d) As used in this section, "methamphetamine precursor drug" means any drug containing ephedrine, pseudoephedrine, phenylpropanolamine or any of their salts, optical isomers or salts of optical isomers.

(e) Any person who knowingly or recklessly violates any provision of this section is guilty of a class A nonperson misdemeanor.

Sec. 2. K.S.A. 2001 Supp. 21-3718 is hereby amended to read as follows: 21-3718. (a) Arson is: (1) Knowingly, by means of fire or explosive:

(1) (A) Damaging any building or property which is a dwelling in which another person has any interest without the consent of such other person;

(2) (B) damaging any building or property which is a dwelling with

1 intent to injure or defraud an insurer or lienholder;  
2 ~~(3)~~ (C) damaging any building or property which is not a dwelling in  
3 which another person has any interest without the consent of such other  
4 person; or

5 (4) (D) damaging any building or property which is not a dwelling  
6 with intent to injure or defraud an insurer or lienholder; or

7 (2) *accidentally, by means of fire or explosive as a result of manufac-*  
8 *turing or attempting to manufacture a controlled substance in violation*  
9 *of K.S.A. 65-4159, and amendments thereto, damaging any building or*  
10 *property.*

11 (b) (1) Arson, as described in ~~subsections~~ subsection (a)(1)(A) ~~or (2)~~  
12 ~~, (a)(1)(B) or (a)(2)~~, is a severity level 6, person felony.

13 (2) Arson, as described in ~~subsections (a)(3) or (4)~~ subsection  
14 (a)(1)(C) or (a)(1)(D), is a severity level 7, nonperson felony.

15 Sec. 3. K.S.A. 2001 Supp. 65-4152 is hereby amended to read as  
16 follows: 65-4152. (a) No person shall use or possess with intent to use:

17 (1) Any simulated controlled substance;

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

21 (3) any drug paraphernalia to plant, propagate, cultivate, grow, har-  
22 vest, manufacture, compound, convert, produce, process, prepare, test,  
23 analyze, pack, repack, sell or distribute a controlled substance in violation  
24 of the uniform controlled substances act; or

25 (4) anhydrous ammonia ~~for the illegal production of a controlled sub-~~  
26 ~~stance or pressurized ammonia~~ in a container not approved for that chem-  
27 ical by the Kansas department of agriculture.

28 (b) Violation of ~~subsections~~ subsection (a)(1) or (a)(2) is a class A  
29 nonperson misdemeanor.

30 (c) Violation of subsection (a)(3), other than as described in para-  
31 graph (d), or subsection (a)(4) is a drug severity level 4 felony.

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

35 Sec. 4. K.S.A. 2001 Supp. 65-7006 is hereby amended to read as  
36 follows: 65-7006. (a) It shall be unlawful for any person to possess ephed-  
37 rine, pseudoephedrine, *red phosphorus, lithium metal, sodium metal, io-*  
38 *dine, anhydrous ammonia, pressurized ammonia or phenylpropanolami-*  
39 *ne, or their salts, isomers or salts of isomers with intent to use the product*  
40 *as a precursor to any illegal to manufacture a controlled substance.*

, hydrophosphorus acid  
illegally

41 (b) It shall be unlawful for any person to market, sell, distribute, ad-  
42 vertise, or label any drug product containing ephedrine, pseudoephed-  
43 rine, *red phosphorus, lithium metal, sodium metal, iodine, anhydrous am-*

1 *monia, pressurized ammonia* or phenylpropanolamine, or their salts, \_\_\_\_\_, hydrophosphorus acid  
 2 isomers or salts or isomers if the person knows or reasonably should know  
 3 that the purchaser will use the product as a precursor to any illegal to \_\_\_\_\_ illegally  
 4 *manufacture a controlled substance.*

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

12 (d) A violation of this section shall be a drug severity level 4 2 felony.

13 Sec. 5. K.S.A. 2001 Supp. 21-3718, 65-4152 and 65-7006 are hereby  
 14 repealed.

15 Sec. 6. This act shall take effect and be in force from and after its  
 16 publication in the statute book.

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**Testimony of Lieutenant Daryl Reece  
Johnson County Sheriff's Office  
Concerning Senate Bill 515  
February 22, 2002**

Mr. Chairman and members of the committee, my name is Daryl Reece and I appear today on behalf of the Kansas Peace Officers Association ("KPOA") and the Kansas Sheriff's Association ("KSA"), which collectively represent approximately 5,000 members state wide. It is with deep gratitude that I accept this opportunity to represent the collective views of these two organizations in reference to Senate Bill 515.

I have been a law enforcement officer for over sixteen years, including approximately seven years as an officer assigned to the Street Drug Unit. During this time I have been increasingly confronted with the seriousness of the methamphetamine problem in Kansas. The disastrous consequences of this problem are revealed not only in the destroyed lives and families of those who have become addicted to methamphetamine but also in the cost to taxpayers. It has been estimated, for instance, that for each pound of methamphetamine produced in an illegal lab, five pounds of toxic waste are generated. The average cost to clean up a methamphetamine laboratory is approximately three thousand dollars (\$3,000).

Methamphetamine, as you may well know, is easily made using chemicals bought at local retail stores. Very little technical knowledge is needed to make methamphetamine; furthermore, the home manufacturing of this substance has been enhanced by internet sites which provide detailed step by step cooking directions.

Methamphetamine is manufactured using the ephedrine or pseudoephedrine reduction method. This method utilizes over-the-counter cold and allergy tablets containing ephedrine or pseudoephedrine as precursors which are placed in water, alcohol, or other solvents. After several hours, the extraction process is completed as the ephedrine or pseudoephedrine separates from the tablets. Additional substances which may be used in this method include, but are not limited to, common products such as: sulfuric acid (drain cleaner), methanol alcohol ("HEET"), anhydrous ammonia, rock salt, sodium hydroxide ("Red Devil Lye"), red phosphorus (matches), and lithium or sodium metal. In short, the ingredients for making methamphetamine are not hard to obtain and, once obtained, are easily processed. Any attempts to deal with this problem, therefore, must address the ease with which these substances are procured. Efforts to solve this problem through reactive law enforcement actions must be complimented by proactive measures which will make the manufacturing more difficult.

A logical step in reducing methamphetamine production would involve limiting the sales of any non-prescription precursor drug containing ephedrine or pseudoephedrine. The organizations I represent believe this can be accomplished through the passage of SB 515. Please do not misunderstand me. We do not claim this bill is the "silver bullet" that will totally eliminate the manufacturing of methamphetamine. It is apparent, however, that passage of SB 515 would provide an additional means for controlling the proliferation of this drug problem.

The need for restrictions on the sale of precursor drugs has already been recognized by several retailers. Such major retail stores as Wal-Mart, Walgreens, Price Chopper, and Osco have implemented policies which place restrictions on the sales of products containing these chemicals. Unfortunately, other retail operations do not have such policies. For that reason, there is a need for legislation which would deprive would-be methamphetamine cooks of an ample supply of ingredients essential to the manufacturing of their life-destroying product.

Thank you for your time and the opportunity to appear before you today.

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# LEGISLATIVE TESTIMONY



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SB 515

February 22, 2002

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
Senate Judiciary Committee

by

Marlee Carpenter  
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am here on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry. We are here today in opposition of New Section 1 of SB 515.

Over the past two years, retailers in Kansas have worked with the Kansas Department of Health and Environment and the KBI to develop a "Meth Watch" program. This program was officially introduced May 14, 2001. Since that time, we have had a great number of retailers respond and implement the program in their stores.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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In addition to initiating the "Meth Watch" program last summer, Legislative Post Audit (LPA) undertook a study to look at the methamphetamine problem in the state. Surveys were drafted and sent out to interested parties, and were due back to LPA during the same time period as the "Meth Watch" program was getting underway. I have attached a timeline to my testimony.

Kansas' retailers understand the problem meth causes in the community. In fact, many Kansas retail establishments have made significant changes in the way they shelve, store and sell precursor drugs. Some have moved many of the precursor drugs to aisles that are within view of the pharmacy, within the pharmacy itself or to aisles monitored by cameras or security guards. Some stores have even imposed storewide package limits. We encourage all retailers to undertake the precautions that they feel are necessary to run their business most efficiently.

The Kansas Retail Council opposes package limits for several reasons. First, it should be up to the business to determine what practices they should employ. As mentioned above, Kansas' retailers are already making changes in the way they do business. Second, package limits in other states have not worked. Many of the precursor products are stolen off the shelves or individuals are buying the maximum number of packages at three or four different retail establishments to get around the limitations. Where there is a will, there is a way.

The Kansas "Meth Watch" program has been in effect for less than a year. As part of the program, retail establishments display stickers on their doors, cash registers and shelves. Posters are hung in employee break rooms and suspicious person reports are located where employees can fill them out. We believe that this program is a step in the right direction.

Kansas' retailers understand that methamphetamine use and abuse is a problem and they are working with KBI and KDHE in helping curb the availability of the precursor drugs. We feel that package limits should be encouraged, but not mandated by the state. Thanks you for your time and I will be happy to answer any questions.



**KANSAS RETAIL COUNCIL**

A DIVISION OF THE *Kansas Chamber of Commerce and Industry*

## **Kansas Retailer Meth Watch Program**

The Kansas Retailer Meth Watch Program was developed under the guidance of the Kansas Department of Health and Environment and the Kansas Bureau of Investigations. Retailers from around the state participated in the design and concept of this program, which was officially introduced in May 2001. Below is a timeline of the development and implementation of the Kansas Retailer Meth Watch Program.

- July 1999                      Legislation enacted
  - October 1999                KDHE hires staff for the program
  - December 1999             Initial retail meeting
  - February 2000              KDHE begins responding to meth lab cleanups
  - November 2000            Meth Watch Retailer team begins meeting
  - January 2001                Meth Watch Retail team meeting
  - February 2001              Meth Watch Retail team meeting
  - April 2001                  Final Meth Watch Retail team meeting
  - May 14, 2001                Meth Watch Kickoff—program set up in stores
  - May 2001                    Due Date of Surveys for District Attorneys and Law Enforcement Officials for the Legislative Post Audit.
  - July 2001                    Legislative Post Audit Report
  - Fall 2001                    KDHE finalizes Meth Watch website
  - January 2002                KDHE begins new campaign to restock existing participants and recruit new stores
- 
- In 2001, there were 105 Chain Drug Stores (Walgreens, Osco, etc.), 84 Supermarket Drug Stores (Dillons, HyVee, etc.), 76 Mass Merchant Drug Stores (Wal-mart, Target, etc.), and 292 Independent Drug Stores in Kansas.
  - Since May 2001, more than 690 packets of Meth Watch materials were requested by drug stores, gas stations, grocery stores, etc.
  - Since May 2001, more than 65% of the chain drug stores and mass merchants have set up the Meth Watch Program in their store, with more stores coming on board each day.



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### TESTIMONY IN OPPOSITION TO SENATE BILL 515 KANSAS SENATE JUDICIARY COMMITTEE

Good morning. My name is Nancy A. Bukar and I am the Director of State Government Relations for the Consumer Healthcare Products Association (CHPA)<sup>1</sup>. Thank you for this opportunity to testify before the Kansas House Judiciary Committee. On behalf of CHPA, I am here to express our **opposition** to Senate Bill 515, legislation that would impose retail sales limits for products containing precursor chemicals.

CHPA and its members are opposed to the sales limit provision of this bill because **legislation to limit access to products containing precursor chemicals should target the crimes associated with methamphetamine, not the consumer or the businesses providing these products**. This bill has the opposite effect and would severely limit consumers' access to legitimate and necessary products.

CHPA and its members do not want to encourage consumers to buy 8, 10 or 20 packages of medicine at a time. Rather, it is an issue of whether these sales limits will do any good, and whether retailers should be required to police consumer behavior and be required to limit otherwise lawful activity, with possible criminal consequences for the retailers if they can't or don't. The questions that should be asked are whether these restrictions will contribute to solving the diversion and methamphetamine production problems, and whether these laws can be implemented without denying consumers access to safe and effective medications that are found in millions of medicine cabinets across the country.

#### **COSTS WITHOUT PROOF OF EFFECTIVENESS**

The products affected by the provisions of this bill are common and often used as remedies for everyday ailments. The retail sales limit provisions of Senate Bill 515, as drafted, have the potential to impose some serious burdens on legitimate businesses and unnecessary restrictions upon consumers by limiting access without a proven necessity for doing so. Furthermore, the cost of compliance could be quite high (training clerks, redesigning computer systems) without any proof that they could be effective in combating Kansas' methamphetamine problem. CHPA is aware of information compiled in California when they began collecting data on precursor chemical sales. California is the state with the worst methamphetamine problem in the country, and the data indicated that it costs **over \$3 million** to run their precursor chemical program. Is the state of Kansas prepared to take on a financial burden of this magnitude without proof of its effectiveness?

Moreover, limits on retail sales of OTC medicines are more about the appearance of responding to the drug problem than about having any substantial effect on methamphetamine production. Sales limits can easily

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<sup>1</sup> The Consumer Healthcare Products Association (CHPA) is the 121-year-old trade association that represents manufacturers – both large and small – of nonprescription or over-the-counter (OTCs) medicines and dietary supplements. Nonprescription drugs include cough/cold remedies, antacids, pain relievers and many others, and dietary supplements include vitamins, minerals and a variety of herbal and botanical products.

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be circumvented by those intent on acquiring a large amount of precursor chemicals. These individuals could make multiple transactions. Creative criminals might make purchases through different check-out lanes of the same store, make multiple purchases on consecutive days, have their friends join them in making the purchases, or drive from store to store in a single community. Alternatively, they might just steal the products instead – these sales limits may actually *encourage* theft because paying for the items would arouse suspicion.

Finally, in the states that have already enacted these sales restrictions, there has been no evidence that these laws have reduced the number of methamphetamine labs, the amount of meth on the street, or even the availability of the drug – it simply reduces *one possible* source of *one possible* precursor.

### RETAIL SALES LIMIT REQUIREMENTS ARE UNWORKABLE

In its current form, Senate Bill 515 imposes a 3-package limit on sales of all products containing ephedrine, pseudoephedrine and phenylpropanolamine. CHPA is concerned that the imposition of sales limits could cause legitimate retailers and other businesses to avoid the burden associated with selling these products by removing them from their inventory. This would, in turn, limit the consumer's choice and options in purchasing legitimate drug products while having little impact on the methamphetamine problem in Kansas. Methamphetamine can be made using a number of common household products that can be purchased in retail outlets around the state and **there is a substitute for every chemical that is used**. Imposing these provisions will simply force criminals to use other ingredients that will not be regulated by the bill.

These retail sales limits put retail store clerks (who may be part-time, or minimum wage employees) on the front line of the drug war and responsible for preventing the store from committing a criminal act. And this is not a case of an item like cigarettes or liquor that is easily distinguishable and identifiable during checkout. There are more than 130 brand name products (totaling hundreds of package sizes), including various allergy, cold, headache, sinus and asthma medications, that contain one of the three ingredients and are hardly distinguishable from other OTC medicines without reading the ingredient label. Compliance with these kinds of restrictions is far too much to expect in a busy checkout line.

Furthermore, these kinds of limits discourage retailers like grocery stores, convenience stores and general merchants from carrying the products altogether because of the potential liability they carry with them. That makes it more difficult for consumers to locate these products, which are intended to provide instant relief from common ailments. Imagine trying to purchase a decongestant or allergy medicine at 10:00 at night for immediate relief and you can't find a store that stocks the product.

### CONCLUSION

CHPA opposes sales restrictions on the quantity of OTC medicines that can be sold by retailers in a single transaction. These limits are misplaced, unnecessary, ineffective and unduly burdensome to law-abiding merchants. Thank you very much for your consideration of our views on this matter. I would be happy to answer any of the committee's questions at this time.



**Kansas Pharmacists Association**  
Kansas Society of Health-System Pharmacists  
Kansas Employee Pharmacists Council  
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Topeka KS 66604  
Phone 785-228-2327 ♦ Fax 785-228-9147 ♦ [www.kansaspharmacy.org](http://www.kansaspharmacy.org)  
Robert (Bob) R. Williams, MS, CAE, Executive Director

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## TESTIMONY

**Senate Judiciary Committee  
February 22, 2002**

### SB 515

My name is Bob Williams, I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the committee regarding SB 515.

In 1999 KPhA testified on HB 2469 which enacted the Kansas Chemical Control Act. Provisions in HB 2469 stiffened certain penalties regarding the manufacturing of methamphetamine and other substances. Like SB 515, the original language of HB 2469 contained restrictions on the sale of methamphetamine precursor drugs or any combination of methamphetamine precursor drugs. That language was removed from the bill and replaced with a voluntary "Meth Watch Program". KPhA worked with a number of groups on the development of the Meth Watch Program. All those involved spent considerable time and money in the development of the program. The Meth Watch program went public May 2001.

SB 515 contains language which restricts the sale of any methamphetamine precursor drug or any combination of methamphetamine precursor drugs to three packages. SB 515 also establishes a class A nonperson misdemeanor for any person who "knowingly or recklessly" sells more than three packages of any methamphetamine precursor drug or combination thereof.

KPhA opposed those provisions in 1999 and we continue to oppose those provisions today.

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While KPhA supports the voluntary implementation of educational programs regarding the sale of these products (as contained in the Meth Watch Program), we are opposed to turning sales clerks into "Meth Police" and punishing them if they do in fact sell more than three packages of the product.

KPhA does not believe placing a restriction on the number of packages which can be sold will do much to control the meth problem in Kansas and, furthermore, will create a hardship on those individuals who need to purchase more than three packages for legitimate reasons. Individuals who purchase these products for the production of meth will either steal the product or simply go through the sales line as many times as necessary to purchase the product.

SB 515 targets the innocent and places harsh sanctions on sales clerks and legitimate customers. The voluntary Meth Watch Program has been in operation for less than a year. Efforts to promote the Meth Watch program should be intensified and we should give the program an opportunity to prove its success prior to imposing harsh sanctions on sales clerks and legitimate customers.

Thank you.