

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 21, 2007 in Room 313-S of the Capitol.

All members were present except:

Marti Crow- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research

Athena Andaya, Kansas Legislative Research

Jill Wolters, Office of Revisor of Statutes

Duston Slinkard, Office of Revisor of Statutes

Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigations

Chad Ullom, Kansas Pharmacy Coalition

The hearing on **SB 270 - ephedrine & pseudoephedrine; purchase; sale; pharmacy log**, was opened.

Kyle Smith, Kansas Bureau of Investigations, appeared as a proponent of the bill. He explained the bill would require the person purchasing ephedrine or pseudoephedrine to record their name & address in a log retained by the seller. The seller would be required to verify that name provided by seeing identification of the person.

It also provides civil immunity to a seller who, in good faith, releases information in a log to any law enforcement officer. The bill would make it illegal to purchase three packages of drugs containing ephedrine or pseudoephedrine at one time, not more than 3.6 grams in a single transaction and 9 grams within a 30 day period. (Attachment 1)

Chad Ullom, Kansas Pharmacy Coalition, appeared in support of the bill and stated that it would bring Kansas in compliance with the Federal Combat Methamphetamine Epidemic Act of 2005. He suggested an amendment that would clarify that the seller can enter the purchaser's information if the individual is unable to. (Attachment 2)

Written testimony was provided by the National Association of Chain Drug Stores which suggested an amendment that would clarify that the limits would apply only to ephedrine and pseudoephedrine based drugs. (Attachment 3)

The hearing on **SB 270** was closed.

**SB 270 - ephedrine & pseudoephedrine; purchase; sale; pharmacy log**

Representative Kinzer made the motion to adopt the KBI proposed amendment to strike "or" on page 3 at the end of line 37. Representative Colloton seconded the motion. The motion carried.

Representative Kinzer made the motion to adopt the proposed amendment by Walgreens which would clarify that sellers can record transaction information in the log book. (Attachment 4) Representative Pauls seconded the motion. The motion carried.

Representative Kinzer made the motion to adopt the proposed amendment by NACDS which would clarify that the limits apply only to ephedrine and pseudoephedrine based drugs. (Attachment 5) Representative Pauls seconded the motion. The motion carried.

Representative Kinzer made the motion to report **SB 270** favorably for passage, as amended. Representative Whitham seconded the motion. The motion carried.

**SB 203 - release prior to trial, appearance bonds, cash deposit required to equal amount of bond**

Representative Kinzer made the motion to amend on page 2 (4) to make clear that any money that was left

CONTINUATION SHEET

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over after restitution, court costs & fees were paid would then be returned to the inmate. Representative Ward seconded the motion. The motion carried.

Chairman O'Neal brought to the committees attention that Wyandott County had requested a bill that would allow them to implement their own bonding authority, **HB 2203**.

Representative Kuether made the motion to strike the provision of SB 203 and amend in the provisions of HB 2203. Representative Owens seconded the motion. Committee members voiced their opinion that courts bonding is not a traditional court function and has been reserved for private businesses to handle. The motion failed.

Representative Watkins made the motion to report SB 203 favorably for passage, as amended. Representative Whitham seconded the motion. The motion carried.

**SB 55 - department of corrections, disposition of inmate compensation**

Watkins made the motion to adopt the balloon amendment which would prioritize the order of payment from inmate monies. (Attachment 6) Representative Kinzer seconded the motion. The motion carried.

Representative Watkins made the motion to report SB 55 favorably for passage, as amended. Representative Kinzer seconded the motion. The motion carried.

**SB 324 - repealing certain KSA sections concerning certain crimes**

Representative Pauls made the motion to strike the repeal of K.S.A. 21-3727. Representative Kuether seconded the motion. The motion carried.

Representative Pauls made the motion to report SB 324 favorably for passage, as amended. Representative Davis seconded the motion. The motion carried.

**SB 166 - clarifying amendments to hard 40 sentence for sex crimes and sexual exploitation of a child.**

Representative Kinzer made the motion to report SB 166 favorably for passage. Representative Watkins seconded the motion. The motion carried.

**SB 351 - office of administrative hearings; exception to use by the office of state bank commissioner**

Representative Davis made the motion to have staff amend the bill to close the loophole which allows state agencies to appoint presiding officers to act as hearing officers. Representative Ward seconded the motion. The motion carried.

Representative Kinzer made the motion to amend on page 4, line 9 the bill to have any full-time hearing officers of any agency coming into OAH in 2009 to transfer their hearing officer. Representative Colloton seconded the motion. The motion carried.

Kansas Judicial Council brought to the committees attention that the Department of Agriculture received an exemption in 2003 from having hearings done by the OAH unless a party requested the matter be heard before the OAH. That exemption was reversed in conference committee so OAH would hear the matter unless the party requested it be heard by the Department of Agriculture. Since its enactment, not a single Department of Agriculture hearing has come to the OAH. It was the Judicial Council's conclusion that either no hearings are being conducted, the secretary is hearing all the cases or they are simply not following the law. It was suggested that K.S.A. 75-37-121 be stricken. Representative Colloton made the motion to amend the bill to strike K.S.A. 75-37-121. Representative Watkins seconded the motion. The motion carried.

Representative Kinzer made the motion to report SB 351 favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

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**SB 31 - jurisdiction of municipal courts**

Representative Ward made the motion to delete the provisions of SB 31 and replace it with a balloon amendment which would create concurrent jurisdiction with municipal and district courts. (Attachment 7)  
Representative Pauls seconded the motion. The motion carried.

Representative Ward made the motion to have the bill be retro-active to July 1, 2006. (Attachment 8)  
Representative Pauls seconded the motion. The motion carried.

Representative Ward made the motion to report **Substitute for SB 31** favorably for passage. Representative Watkins seconded the motion. The motion carried.

**SB 103 - criminal procedure; palm prints; expungement of DNA samples and profile records**

Representative Pauls made the motion to strike the provisions of SB 103 and replace with the provisions of HB 2384 - collection of DNA and strike on page 3, line 3 "or". Representative Colloton seconded the motion. The motion carried.

Representative Kinzer made the motion to clarify section 5 in that persons who file a petition with the KBI to have their DNA record expunged would happen. Representative Hodge seconded the motion. The motion carried.

Representative Kinzer made the motion reinstate the language on lines 20 -24. Representative Hodge seconded the motion. The motion carried.

Representative Whitham made the motion to report SB 103 favorably for passage, as amended. Representative Pauls seconded the motion. The motion carried.

**SB 56 - Increasing fees for county law libraries**

Representative Yoder made the motion to delete the provision of SB 56 and replace with the distributed balloon which would allow an individual to choose either a remedy under full consideration or treble damages, but not both. (Attachment 9) Representative Watkins seconded the motion. The motion failed.

The committee meeting adjourned at 5:45 p.m No further meetings have been scheduled.



## Kansas Bureau of Investigation

Larry Welch  
*Director*

Paul Morrison  
*Attorney General*

**Testimony**  
**In support of SB 270**  
**House Judiciary Committee**  
**Kyle Smith, Deputy Director**  
**Kansas Bureau of Investigation**  
**March 21, 2007**

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Bureau of Investigation in support of SB 270, a bill that will enhance our ability to fight methamphetamine production in Kansas. SB 270 primarily merges one of the most effective pieces of crime fighting legislation ever passed in Kansas, with the later federal meth fighting efforts passed last year.

The effectiveness of the Matt Samuels Act has been truly miraculous. Kansas has had an almost 80% drop in the number of meth labs found in Kansas since that law went into effect on June 1, 2005. More than mere numbers, that fact means fewer explosions, fires, injured or killed first responders, law enforcement officers and children. You should rightly take great pride in these accomplishments as they are a direct result of your legislation. (See graph below)

The success of the Kansas and other states in restricting access to the precursor chemicals used to make methamphetamine, primarily pseudoephedrine and ephedrine, spurred the federal government to adopt similar legislation. Contained in HR 199, the "USA Patriot Improvement and Reauthorization Act of 2005" were several provisions restricting the sale of these precursor chemicals. In some ways the federal law was more comprehensive such as by including liquid and gelcap forms of the chemicals, and in other ways it was weaker such as by not placing the chemicals on a controlled substances schedule, thus allowing 'self regulated' sales at truck stops and other retail outlets. The federal legislation specifically did not preempt states from having stricter controls.

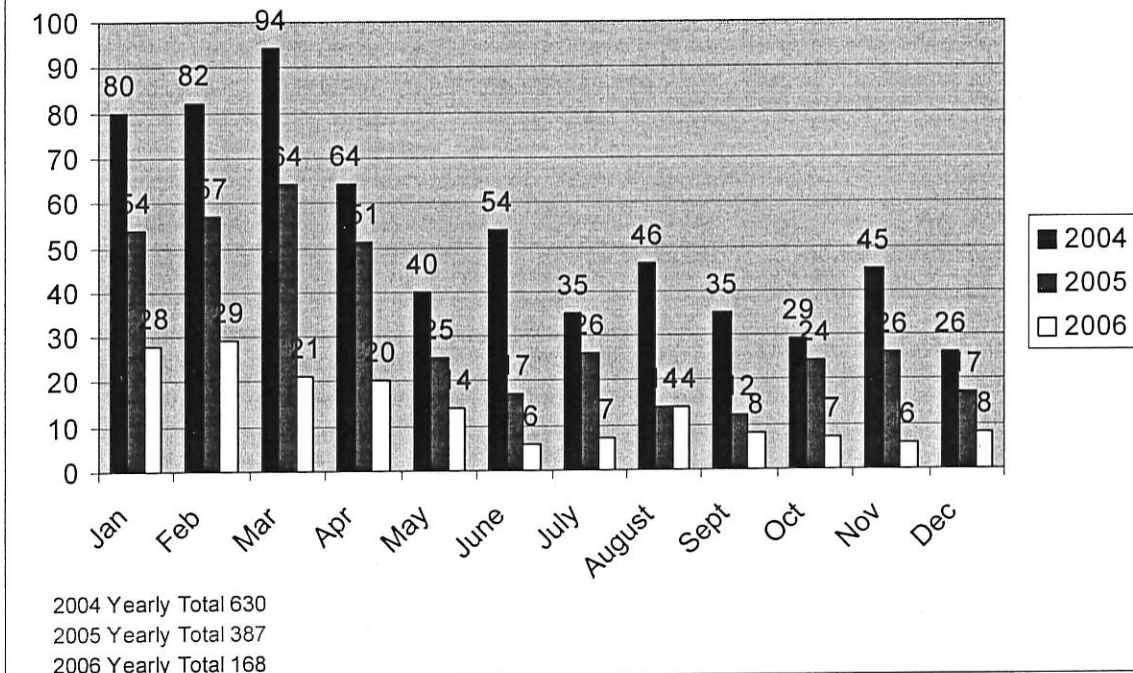
SB 270 is an attempt to reconcile the two laws so that pharmacists and law enforcement will have one set of rules to follow. We do have some balloon amendments, see below, which are friendly amendments intended to simplify and clarify.

House Judiciary

Date 3-21-07

Attachment # 1

## Kansas Methamphetamine Incidents December 31, 2006



Below is a section by section review of the bill that was given to the Senate Judiciary committee. I was going to rewrite it since the Senate did adopt most of the proposed amendments but then decided it might be best if I left it as presented to explain the reasons the amendments were made.

I have also discussed with Jill Wolters of the revisor's office one technical or grammatical, amendment that is needed – on page 3, adding back the “or” at the end of line 37.

Thank you for your consideration and time. SB 207 tackles complicated issues and statutes but, as we have see with the Matt Samuels Act, this approach can have major impact increasing public safety. We appreciate your support and I would be happy to answer any questions.

- Section 1 copies the 'self certification' process that the federal government created to deal with the essentially unregulated retailers that were allowed to keep selling the precursors under the federal law. There is really no reason to duplicate this process and

have both the federal and state governments do this process. So we would respectfully suggest striking section 1 and section (k)(3) of section 2 as duplicative and unnecessary.

- Section 2. On page 3, SB 270 adds language mirroring the federal law, regarding the details in logs required to be kept whenever the precursors are sold. Consistency here is very useful. The self-certification language in section (k) at the bottom of page 3 to line 2 of page 4 is probably unnecessary and duplicative and, as mentioned above and in our balloon, we would suggest striking the proposed language. However, in our balloon we suggest an alternative section (l) that allows a sale of a two-dosage unit package without using the log. This would mimic the federal law, which also allows the sale, without use of logs, of these packages containing less than 60 milligrams of controlled substance.

On page 4, lines 3-11 we would also respectfully suggest striking the current section (l) which makes it a misdemeanor for pharmacist to sell too much psuedoephedrine/ephedrine (3 packages now, 3.6 grams under proposal). Pharmacists are already well regulated and assisting any intentional violation of the law could result in loss of their license as well as an 'aid and abet' charge. The primary intent is to go after the meth cooks or their suppliers who are buying the products in excessive amounts.

- Section 3 amends K.S.A. 65-4113, commonly referred to as schedule V, by striking an exception that was given in 2005 for liquids and gel cap forms of ephedrine and psuedoephedrine.
- Section 4 follows the federal example of specifically not preempting more stringent local law by allowing more stringent ordinances and resolutions.
- Section 5, amends KSA 65-7006, by creating a class A misdemeanor crime of purchasing more than 9 grams in a thirty-day period. In our balloon, we suggest following the federal law and most of our surrounding states, by making it illegal to buy more than 3.6 grams in a single transaction or more than 9 grams in any thirty day period. The 7.5 gram internet/postal restriction is dropped due to section 3 making all forms a scheduled drug and so all sales should be governed by the pharmaceutical act.

There was some concern in 2005 when we passed the Matt Samuels act whether such a criminal offense might raise what in now sometimes called the 'McAdams' problem. I think the McAdams concern is not a problem.

The McAdams line of cases dealt with statutes that made the same act illegal under two different statutes with different penalties. Specifically the possession of psuedoephedrine with the intent to manufacture was illegal under both Kansas statutes for possession of manufacturing paraphernalia KSA 65-153(a)(4) - a level 4 drug felony and the possession of precursor with intent statute, KSA 65-7006 - then a level 1 drug. The key here is that the elements of the crime - possessing psuedoephedrine with intent to manufacture - were covered by two statutes so the court in McAdams said that the variance in penalty was a violation of equal protection.

Here, however, the two crimes have different elements: K.S.A. 65-7006 still makes it illegal to possess psuedoephedrine with the intent to manufacture, but the new crime would make it illegal to purchase psuedoephedrine if certain amounts were exceeded in certain time frames. In other words, if you can prove intent to manufacture, you charge K.S.A. 65-7006, if you have nothing to prove the element of specific intent, but you can prove that he purchased X number of packages in the last 30 days, then you would charge the new offense. Each crime has an element different than the other (intent to manufacture versus purchasing in violation of time frames) so it is not the same activity covered by two statutes.

It should also be noted that the misdemeanor violation seems to be working it Oklahoma and other states that also passed schedule V legislation.

### KBI Balloon Amendments

New strike-throughs are ~~double~~ and new language is in *bold italic*.

Session of 2007

### SENATE BILL No. 270

By Senators V. Schmidt and D. Schmidt

AN ACT concerning controlled substances; relating to ephedrine and psuedoephedrine; amending K.S.A. 2006 Supp. 65-1643, 65-4113, 65-4166 and 65-7006 and repealing the existing sections.

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

~~New Section 1. The attorney general shall adopt rules and regulations establishing criteria for self-certifications pursuant to K.S.A. 65-1643, and amendments thereto. The criteria shall provide that a separate certification is required for each place of business at which a licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist sells a controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto.~~

*This language duplicates federal functions and is unnecessary.*

~~The attorney general shall establish a program regarding such certifications and training through an internet site of the office of the attorney general. Promptly after receiving a certification, the attorney general shall make available a copy of the certification to the Kansas bureau of investigation and local law enforcement officials.~~

Sec. 2. K.S.A. 2006 Supp. 65-1643 is hereby amended to read as follows: 65-1643. It shall be unlawful:

- (a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board:
- (1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board;
  - (2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety;
  - (3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.
- (b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with respect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.
- (c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.
- (d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.
- (e) For any person to in any manner distribute or dispense samples of any drugs without first having obtained a permit from the board so to do, and it shall be necessary to obtain permission from the board in every instance where the samples are to be distributed or dispensed. Nothing in this subsection shall be held to regulate or in any manner interfere with the furnishing of samples of drugs to duly licensed practitioners, to mid-level practitioners, to pharmacists or to medical care facilities.
- (f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be



required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

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

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

(i) For any person to be a pharmacy student without first obtaining a registration to do so from the board, in accordance with rules and regulations adopted by the board, and paying a pharmacy student registration fee of \$25 to the board.

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

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

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

(B) any person purchasing, receiving or otherwise acquiring any such controlled substance produces a photo identification showing the date of birth of the person and signs a log and enters in the log such person's address and the date and time of sale. The log or database required by the board shall be available for inspection during regular business hours to the board of pharmacy and any law enforcement officer; or

(C) the seller determines that the name entered in the log corresponds to the name provided on such identification and that the date and time entered are correct; and

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

(2) there is a lawful prescription; or

~~(3) the pharmacy has submitted to the attorney general a self-certification that any licensed pharmacist, registered pharmacy technician or pharmacy intern or clerk supervised by a licensed pharmacist, employed by such pharmacy has undergone training provided by the seller to ensure that such individuals understand the requirements that apply under this subsection and in accordance with criteria established by the attorney general. The pharmacy shall maintain a copy of such certification and records demonstrating such individuals have undergone the training.~~

*Again, this system duplicates the federal system and is not needed under the proposed bill.*

**(3) the transaction involves only a 2 dosage unit blister pack containing a total of no more than 60 milligrams of the controlled substance.**

*Follows federal exemption of 2-unit sales from log requirement.*

~~(l) For any person to sell or distribute in a pharmacy four or more packages or containers of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, (1) to a specific customer within any seven-day period, in an amount which exceeds a daily amount of 3.6 grams, without regard to the number of transactions, or (2) unless such controlled substance is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, the product is packaged in unit-dose packets or pouches.~~

*Stiking this and adding to sec. 5 focuses crime on meth cooks, not pharmacists.*

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

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

Sec. 3. K.S.A. 2006 Supp. 65-4113 is hereby amended to read as follows: 65-4113. (a) The controlled substances or drugs, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section are included in schedule V.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing the following narcotic drug or its salts:

Buprenorphine . . . . . 9064

(c) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (6) Not more than .5 milligram of difenoxin (9168) and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Propylhexedrine (except when part of a compound used for nasal decongestion which is authorized to be sold lawfully over the counter without a prescription under the federal food, drug and cosmetic act, so long as it is used only for such purpose) . . . . . 8161

(2) Pyrovalerone. . . . . 1485

(e) ~~Except as provided in subsection (g),~~ Any compound, mixture or preparation containing any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers.

(f) ~~Except as provided in subsection (g),~~ Any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(g) ~~The scheduling of the substances in subsections (e) and (f) shall not apply to any compounds, mixtures or preparations of ephedrine or pseudoephedrine which are in liquid, liquid capsule or gel capsule form.~~

Sec. 4. K.S.A. 2006 Supp. 65-4166 is hereby amended to read as follows: 65-4166. The provisions of ~~this act~~ *K.S.A. 21-2501a, 65-1643, 65-4113, 65-4152, 65-4159, 65-7001 and 65-7006, and amendments thereto, and K.S.A. 2006 Supp. 75-722, and amendments thereto,* and any rules and regulations promulgated thereunder shall be applicable and uniform throughout this state and in all cities and counties therein. ~~No~~ *A city or county shall may* enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of this act ~~unless expressly authorized by law to do so. more stringent than such provisions. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and such provisions.~~

Sec. 5. K.S.A. 2006 Supp. 65-7006 is hereby amended to read as follows: 65-7006. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to market, sell, distribute, advertise, or label any drug product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia 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 to manufacture a controlled 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) ~~It shall be unlawful for any person to purchase, receive or otherwise acquire at retail more than 3.6 grams in any single transaction or more than nine grams within any thirty-day period or by means of shipping through any private or commercial carrier or the postal service 7.5 grams of any controlled substance designated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto, within any thirty-day period.~~

*Copies federal law criminalizing excessive purchases.*

(e) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(e) (f) A violation of ~~this section~~ *subsection (a), (b) or (c)* shall be a

drug severity level 2 felony. *A violation of subsection (d) shall be a class  
A nonperson misdemeanor*

Sec. 6. K.S.A. 2006 Supp. 65-1643, 65-4113, 65-4166 and 65-7006  
are hereby repealed.

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



**Kansas House Judiciary Committee**  
**SB 270 Amendment – Sale and Purchase of Ephedrine and**  
**Pseudoephedrine**  
**Chad Ullom, Pharmacy Supervisor, Walgreens Co.**

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Thank you Chairman O'Neal, Vice-Chairman Kinzer and Ranking Minority Member Pauls for allowing me testify in support of SB 270 today. My name is Chad Ullom, Pharmacy Supervisor for the Walgreen Company in the Kansas City South District. The Walgreen Co. ("Walgreens") **supports** SB 270 as amended, Sale and Purchase of Ephedrine and Pseudoephedrine. SB 270 as amended would bring Kansas into compliance with the federal Combat Methamphetamine Epidemic Act of 2005.

Walgreens is committed to assisting Kansas in fighting the use of methamphetamine. While Walgreens supports the amended language, we would like to suggest adding language regarding Section ~~2~~(1)(B). This section requires the purchaser to enter their address, date and time of the sale into a log and sign, indicating the given information is accurate. This language mirrors federal Drug Enforcement Agency (DEA) recording requirements which have been interpreted broadly to allow sellers to enter the purchaser's information if the individual is unable to or if the information is captured electronically.

While the DEA has chosen to interpret the law broadly, it is unclear how the state of Kansas will interpret this language. Walgreens would suggest the language include the seller to clarify who can record the information. When a purchase of pseudoephedrine or ephedrine products is made at Walgreens, the employee making the sale requests to see the purchaser's identification and enters this information into our point of sale system. The purchaser is then requested to sign for the product and the signature is captured electronically. Clarifying that sellers can also record transaction information in Section (2)(1)(B) ensures all methods of capturing information are included in the statute.

Walgreens also supports the amendment offered by the National Association of Chain Drug Stores (NACDS) that would calculate the limit sold to purchasers based on the pseudoephedrine or ephedrine base rather than the weight of the product. Including this language will ensure compliance with federal law.

Thank you again for giving me this opportunity to discuss this important issue. I would be happy to answer any questions you may have at this time.

House Judiciary  
Date 3-21-07  
Attachment # 2



Testimony re: Senate Bill 270
Before the Kansas House Judiciary Committee
March 21, 2007

Mr. Chairman and members of the Committee, I am Kevin Nicholson, Vice President of Pharmacy Regulatory Affairs for the National Association of Chain Drug Stores (NACDS). NACDS represents the nation's leading retail chain pharmacies and suppliers, helping them better meet the changing needs of their patients and customers. NACDS' members operate more than 37,000 pharmacies, employ 114,000 pharmacists, fill more than 2.3 billion prescriptions yearly, and have annual sales of nearly \$700 billion.

Our 15 members in Kansas operate 310 pharmacies, employ almost 27,000 Kansans, and contribute over \$403 million in tax revenue to the state of Kansas every year.

On behalf of our members, I appreciate the opportunity to provide testimony on Senate Bill 270.

413 North Lee Street
P.O. Box 1417-D49
Alexandria, Virginia
22313-1480

We thank the bill's sponsors and the Kansas legislature for introducing Senate Bill 270 to better harmonize Kansas law with the provisions of the federal Combat Methamphetamine Epidemic Act ("Combat Meth Act"). We believe that the harmonization of pseudoephedrine and ephedrine retail restrictions between Kansas and federal law will benefit Kansas citizens, law enforcement, and pharmacies. We further thank the bill's sponsors and legislature for recent amendments to the bill that better achieve this goal.

However, we have identified a few remaining concerns about Senate Bill 270 that we feel must be addressed. We would like recommend friendly amendments.

We recommend amending KSA 65-7006(d), which sets the limits on the amount of pseudoephedrine or ephedrine that a person may purchase at retail. The federal Combat Meth Act calculates these limits based on the amount of pseudoephedrine or ephedrine base, that is, the actual amount of the chemical pseudoephedrine or ephedrine. As currently drafted in Senate Bill 270, KSA 65-7006(d) would set these limits based on the weight of total product in the package, this includes other active ingredients, such as Tylenol in combination products, as well as inactive ingredients such as tablet fillers. This would have the unintended consequence of making the actual limits much lower than the Combat Meth Act. In fact, any package size of a product that contains pseudoephedrine or ephedrine that weighs more than 3.6 grams would be banned from sale in Kansas, irrespective of whether the package contained 3.6 gm of pseudoephedrine (or ephedrine) or just a miniscule amount.

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Additionally, many manufacturers have made provisions to ensure that their products comply with the limits set by the federal Combat Meth Act. Any de federal limits would prohibit some cough and cold products from be

House Judiciary
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For the reasons stated above, Senate Bill 270, as currently drafted, would severely reduce the number of cough and cold products available to Kansas citizens. To avoid this result, we recommend amending Senate Bill 270 to clarify that the limits apply to pseudoephedrine or ephedrine base, as the federal Combat Meth Act does.

We very much appreciate the opportunity to provide our perspectives and recommendations to ensure that Senate Bill 270 meets its legislative intent of better harmonizing Kansas law with federal law with respect to retail sales of pseudoephedrine and ephedrine. We ask the Kansas legislature to favorably consider our friendly amendments.

**“Attachment: Recommended Edits”**

Section 3: KSA 65-7006(d), amend as follows [Page 6, lines 15-20] :

(d) It shall be unlawful for any person to purchase, receive, or otherwise acquire at retail **any compound, mixture, or preparation containing** more than 3.6 grams **of pseudoephedrine base or ephedrine base** in any single transaction or **any compound, mixture, or preparation containing** more than nine grams **of pseudoephedrine base or ephedrine base** within any thirty-day period ~~of any controlled substance designated in subsection (e) or (f) of KSA 65-4113, and amendments thereto.~~

*Rationale: The federal Act limits purchases of pseudoephedrine or ephedrine base.*

SENATE BILL No. 270

By Senators V. Schmidt and D. Schmidt

2-5

Proposed Amendment  
Walgreens  
March 21, 2007

House Judiciary  
Date 3-21-07  
Attachment # 4

10 AN ACT concerning controlled substances; relating to ephedrine and  
11 pseudoephedrine; amending K.S.A. 2006 Supp. 65-1643, 65-4113, ~~65-~~  
12 ~~4166~~ and 65-7006 and repealing the existing sections.  
13

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

15 ~~New Section 1. The attorney general shall adopt rules and regula-~~  
16 ~~tions establishing criteria for self-certifications pursuant to K.S.A. 65-~~  
17 ~~1643, and amendments thereto. The criteria shall provide that a separate~~  
18 ~~certification is required for each place of business at which a licensed~~  
19 ~~pharmacist, registered pharmacy technician or pharmacy intern or clerk~~  
20 ~~supervised by a licensed pharmacist sells a controlled substance desig-~~  
21 ~~nated in subsection (c) or (f) of K.S.A. 65-4113, and amendments thereto.~~  
22 ~~The attorney general shall establish a program regarding such certifica-~~  
23 ~~tions and training through an internet site of the office of the attorney~~  
24 ~~general. Promptly after receiving a certification, the attorney general shall~~  
25 ~~make available a copy of the certification to the Kansas bureau of inves-~~  
26 ~~tigation and local law enforcement officials.~~

27 ~~—Sec. 2. Section 1.~~ K.S.A. 2006 Supp. 65-1643 is hereby amended to  
28 read as follows: 65-1643. It shall be unlawful:

29 (a) For any person to operate, maintain, open or establish any phar-  
30 macy within this state without first having obtained a registration from  
31 the board. Each application for registration of a pharmacy shall indicate  
32 the person or persons desiring the registration, including the pharmacist  
33 in charge, as well as the location, including the street name and number,  
34 and such other information as may be required by the board to establish  
35 the identity and exact location of the pharmacy. The issuance of a regis-  
36 tration for any pharmacy shall also have the effect of permitting such  
37 pharmacy to operate as a retail dealer without requiring such pharmacy  
38 to obtain a retail dealer's permit. On evidence satisfactory to the board:  
39 (1) That the pharmacy for which the registration is sought will be con-  
40 ducted in full compliance with the law and the rules and regulations of  
41 the board; (2) that the location and appointments of the pharmacy are  
42 such that it can be operated and maintained without endangering the  
43 public health or safety; (3) that the pharmacy will be under the supervision



4-2

1 tended for human use by hypodermic injection; but such a retail dealer  
2 shall not be authorized to display any of the words listed in subsection  
3 (u) of K.S.A. 65-1626 and amendments thereto, for the designation of a  
4 pharmacy or drugstore.

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

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

12 (i) For any person to be a pharmacy student without first obtaining  
13 a registration to do so from the board, in accordance with rules and reg-  
14 ulations adopted by the board, and paying a pharmacy student registration  
15 fee of \$25 to the board.

16 (j) For any person to operate a veterinary medical teaching hospital  
17 pharmacy without first having obtained a registration to do so from the  
18 board. Such registration shall be subject to the provisions of K.S.A. 65-  
19 1662 and amendments thereto and any rules and regulations adopted  
20 pursuant thereto.

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

24 (1) (A) Such controlled substance is sold or distributed by a licensed  
25 pharmacist, a registered pharmacy technician or a pharmacy intern or  
26 clerk supervised by a licensed pharmacist; ~~and~~

27 (B) any person purchasing, receiving or otherwise acquiring any such  
28 controlled substance produces a photo identification showing the date of  
29 birth of the person and signs a log <sup>✓</sup>and enters in the log <sup>✓</sup>such person's  
30 address and the date and time of sale. The log or database required by  
31 the board shall be available for inspection during regular business hours  
32 to the board of pharmacy and any law enforcement officer; ~~or~~

, or allows the seller to enter in the log,

33 (C) the seller determines that the name entered in the log corresponds  
34 to the name provided on such identification and that the date and time  
35 entered are correct; and

36 (D) the seller enters in the log the name of the controlled substance  
37 and the quantity sold;

38 (2) there is a lawful prescription; ~~or~~.

39 ~~(3) the pharmacy has submitted to the attorney general a self-certifi-~~  
40 ~~cation that any licensed pharmacist, registered pharmacy technician or~~  
41 ~~pharmacy intern or clerk supervised by a licensed pharmacist, employed~~  
42 ~~by such pharmacy has undergone training provided by the seller to ensure~~  
43 ~~that such individuals understand the requirements that apply under this~~

SENATE BILL No. 270

By Senators V. Schmidt and D. Schmidt

2-5

10 AN ACT concerning controlled substances; relating to ephedrine and  
11 pseudoephedrine; amending K.S.A. 2006 Supp. 65-1643, 65-4113, 65-  
12 4166 and 65-7006 and repealing the existing sections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 ~~New Section 1. The attorney general shall adopt rules and regula-~~  
16 ~~tions establishing criteria for self-certifications pursuant to K.S.A. 65-~~  
17 ~~1643, and amendments thereto. The criteria shall provide that a separate~~  
18 ~~certification is required for each place of business at which a licensed~~  
19 ~~pharmacist, registered pharmacy technician or pharmacy intern or clerk~~  
20 ~~supervised by a licensed pharmacist sells a controlled substance desig-~~  
21 ~~nated in subsection (e) or (f) of K.S.A. 65-4113, and amendments thereto.~~  
22 ~~The attorney general shall establish a program regarding such certifica-~~  
23 ~~tions and training through an internet site of the office of the attorney~~  
24 ~~general. Promptly after receiving a certification, the attorney general shall~~  
25 ~~make available a copy of the certification to the Kansas bureau of inves-~~  
26 ~~tigation and local law enforcement officials.~~

27 ~~—Sec. 2. Section 1.~~ K.S.A. 2006 Supp. 65-1643 is hereby amended to  
28 read as follows: 65-1643. It shall be unlawful:

29 (a) For any person to operate, maintain, open or establish any phar-  
30 macy within this state without first having obtained a registration from  
31 the board. Each application for registration of a pharmacy shall indicate  
32 the person or persons desiring the registration, including the pharmacist  
33 in charge, as well as the location, including the street name and number,  
34 and such other information as may be required by the board to establish  
35 the identity and exact location of the pharmacy. The issuance of a regis-  
36 tration for any pharmacy shall also have the effect of permitting such  
37 pharmacy to operate as a retail dealer without requiring such pharmacy  
38 to obtain a retail dealer's permit. On evidence satisfactory to the board:  
39 (1) That the pharmacy for which the registration is sought will be con-  
40 ducted in full compliance with the law and the rules and regulations of  
41 the board; (2) that the location and appointments of the pharmacy are  
42 such that it can be operated and maintained without endangering the  
43 public health or safety; (3) that the pharmacy will be under the supervision

Proposed Amendment  
Nat'l Ass'n of Chain Drug Stores  
March 21, 2007

House Judiciary  
Date 3-21-07  
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1 (b) It shall be unlawful for any person to market, sell, distribute, ad-  
2 vertise, or label any drug product containing ephedrine, pseudoephed-  
3 rine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous  
4 ammonia, pressurized ammonia or phenylpropanolamine, or their salts,  
5 isomers or salts of isomers if the person knows or reasonably should know  
6 that the purchaser will use the product to manufacture a controlled sub-  
7 stance.

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

15 (d) ~~It shall be unlawful for any person to purchase, receive or oth-~~  
16 ~~erwise acquire at retail more than 3.6 grams in any single transaction~~  
17 ~~or more than nine grams, or by means of shipping through any private~~  
18 ~~or commercial carrier or the postal service 7.5 grams within any thirty-~~  
19 ~~day period of any controlled substance designated in subsection (e) or~~  
20 ~~(f) of K.S.A. 65-4113, and amendments thereto, within any thirty-day~~  
21 ~~period.~~

22 (e) For persons arrested and charged under this section, bail shall be  
23 at least \$50,000 cash or surety, unless the court determines on the record  
24 that the defendant is not likely to re-offend, the court imposes pretrial  
25 supervision or the defendant agrees to participate in a licensed or certified  
26 drug treatment program.

27 (f) A violation of ~~this section~~ subsection (a), (b) or (c) shall be a  
28 drug severity level 2 felony. A violation of subsection (d) shall be a class  
29 A nonperson misdemeanor

30 Sec. ~~6-4~~. K.S.A. 2006 Supp. 65-1643, 65-4113, ~~65-4166~~ and 65-7006  
31 are hereby repealed.

32 Sec. ~~7-5~~. This act shall take effect and be in force from and after its  
33 publication in the statute book.

any compound, mixture or preparation containing

of pseudoephedrine base or ephedrine base

any compound, mixture or preparation containing

of pseudoephedrine base or ephedrine base

**SENATE BILL No. 55**

By Committee on Judiciary

1-10

9 AN ACT relating to the department of corrections; concerning work re-  
10 lease and job training programs; disposition of compensation; amend-  
11 ing K.S.A. 75-5268 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 75-5268 is hereby amended to read as follows: 75-  
15 5268. (1) Any inmate who is allowed to participate in such paid employ-  
16 ment or in such job training or paid employment for which a subsistence  
17 allowance is paid in connection with such job training shall pay over to  
18 the secretary or the designated representative of the secretary all moneys  
19 received from such paid employment or job training except that, pursuant  
20 to rules and regulations adopted by the secretary of corrections, the in-  
21 mate shall retain a stipulated reasonable amount of the money as the  
22 secretary or the designated representative of the secretary deems nec-  
23 essary for expenses connected with the employment or job training. The  
24 balance of the moneys paid to the secretary or the designated represen-  
25 tative of the secretary shall be disbursed for the following purposes:

26 (a) A designated minimum amount of that money paid to the secre-  
27 tary shall be returned to the state general fund or to the political subdivi-  
28 sion, federal government or community-based center for such inmate's  
29 food and lodging or, if the inmate is participating in a private industry  
30 program other than work release, the minimum amount collected shall  
31 be deposited to the correctional industries fund;

32 (b) transportation to and from the place of employment at the rate  
33 allowed in K.S.A. 75-3203 and amendments thereto;

34 (c) if any of the dependents of the inmate are receiving public assis-  
35 tance, a reasonable percentage of the inmate's net pay after deduction of  
36 the above expenses shall be forwarded to the court which ordered support  
37 for the dependent or, if there is no order, to the secretary of social and  
38 rehabilitation services;

39 (d) a reasonable percentage of the inmate's net pay after deduction  
40 of the above expenses shall be disbursed for the payment, either in full  
41 or ratable, of the inmate's obligations if such obligations relate to the care  
42 and support of the defendant's immediate family and have been reduced  
43 to judgment;

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1 (e) after deduction of the above amounts, payment of a reasonable  
2 amount for costs assessed to the inmate pursuant to the code of civil  
3 procedure;

4 (f) to the clerk of the district court in which the crime occurred,  
5 payment of a reasonable amount pursuant to an order of restitution for  
6 *all costs, fines, fees and restitution assessed*;

7 (g) payment of a reasonable amount into a savings account for dis-  
8 bursement to the inmate upon release from custody;

9 (h) after deduction of the above amounts, a reasonable percentage of  
10 the inmate's net pay shall be disbursed for the payment, either in full or  
11 ratable, of the inmate's other obligations acknowledged by the inmate in  
12 writing, as authorized by the secretary; and

13 (i) the balance, if any, shall be credited to the inmate's account and  
14 shall be made available to the inmate in such manner and for such pur-  
15 poses as are authorized by the secretary.

16 Sec. 2. K.S.A. 75-5268 is hereby repealed.

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

. Such payment shall be distributed in the following order of priority:  
restitution, costs, fines and fees

Section 1. K.S.A. 2006 Supp. 8-1567 is hereby amended to read as follows:

√ **8-1567. Driving under influence of alcohol or drugs; blood alcohol concentration; penalties.** (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .08 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .08 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(e) On a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

(f) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person

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enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(g) On the fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and amendments thereto and as otherwise provided by law.

(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits who had a child under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. During the service of the one month enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(i) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the

fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(l) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(m) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous



offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(o) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. ✓

Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

An ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished as, a felony.

(q) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county, but shall not be required to, may elect one or two of the three prior to submission of the case to the fact finder.

(r) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(s) For the purpose of this section: (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(2) "Imprisonment" shall include any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-4165, and amendments thereto.

(t) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

**History:** L. 1974, ch. 33, § 8-1567; L. 1976, ch. 50, § 1; L. 1982, ch. 144, § 5; L. 1983, ch. 37, § 2; L. 1984, ch. 37, § 4; L. 1984, ch. 39, § 9; L. 1985, ch. 48, § 9; L. 1985, ch. 50, § 5; L. 1988, ch. 48, § 6; L. 1988, ch. 47, § 17; L. 1989, ch. 92, § 16; L. 1990, ch. 44, § 6; L. 1990, ch. 47, § 3; L. 1991, ch. 36, § 20; L. 1992, ch. 298, § 1; L. 1993, ch. 259, § 8; L. 1993, ch. 291, § 270; L. 1994, ch. 291, § 2; L. 2001, ch. 200, § 14; L. 2002, ch. 50, § 1; L. 2002, ch. 166, § 2; L. 2003, ch. 100, § 1; July 1.

Section 2. K.S.A. 12-4104 is hereby amended to read as follows:

(a)

↓ **12-4104. Municipal court; jurisdiction; search warrants proscribed.** ↓ The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city. ↓ Search warrants shall not issue out of a municipal court.

**History:** L. 1973, ch. 61, § 12-4104; April 1, 1974.

, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a felony if charged in district court:

- (1) K.S.A. 8-1567, and amendments thereto, driving under the influence;
- (2) K.S.A. 21-3412a, and amendments thereto, domestic battery;
- (3) K.S.A. 21-3701, and amendments thereto, theft;
- (4) K.S.A. 21-3707, and amendments thereto, giving a worthless check; or
- (5) K.S.A. 65-4162, and amendments thereto, possession of marijuana.

(b)

Section 3. K.S.A. 22-2601 is hereby amended to read as follows:

Except as provided in K.S.A. 12-4104, and amendments thereto, the

↓ **22-2601. Jurisdiction.** ↓ The district court shall have exclusive jurisdiction to try all cases of  
felony and other criminal cases ~~under the laws~~ of the state of Kansas.

**History:** L. 1970, ch. 129, § 22-2601; L. 1976, ch. 163, § 5; Jan. 10, 1977.

arising under the statutes

offense; and

(5) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

(n) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(o) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. ✓

Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(p) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

On and after the effective date of this act and retroactive for ordinance violations committed on or after July 1, 2006, an

An ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section that be punished as, a felony.

House Judiciary

Date 3-21-07

Attachment # 8

## HOUSE Substitute for SENATE BILL NO. 56

By Committee on Judiciary

AN ACT concerning recovery of certain damages in antitrust cases; amending K.S.A. 50-115 and 50-161 and repealing the existing sections.

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

Section 1. K.S.A. 50-115 is hereby amended to read as follows: 50-115. Except as provided in K.S.A. 12-205, and amendments thereto, any person in privity with the party charged with a violation of K.S.A. 50-101 et seq., and amendments thereto, injured or damaged by any such arrangement, contract, agreement, trust or combination, described in K.S.A. 50-112 and 50-113, and amendments thereto, may sue for and recover in any court of competent jurisdiction in this state, of any person, the full consideration or sum paid by such person for any goods, wares, merchandise and articles included in or advanced or controlled in price by such combination, or the full amount of money borrowed, provided such person elects to pursue the full consideration remedy under this section in lieu of seeking treble damages pursuant to K.S.A. 50-161, and amendments thereto. In no case shall any person be awarded full consideration damages pursuant to this section as part of or in addition to an award of treble damages pursuant to K.S.A. 50-161, and amendments thereto.

Sec. 2. K.S.A. 50-161 is hereby amended to read as follows: 50-161. (a) As used in this section, the term "person" means any individual, corporation, partnership, firm, company or other association of persons, and such term shall include the state of Kansas and any of its political subdivisions.

(b) Except as provided in K.S.A. 12-205, and amendments thereto, any person who may be damaged or injured by any agreement, monopoly, trust, conspiracy or combination which is declared

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unlawful by any of the acts contained in chapter 50 of the Kansas Statutes Annotated, relating to unlawful acts, agreements, monopolies, trusts, conspiracies or combinations in restraint of trade, shall have a cause of action against any person causing such damage or injury. Such action may be brought by any person who is injured in such person's business or property by reason of anything forbidden or declared unlawful by this act, regardless of whether such injured person dealt directly or indirectly with the defendant. The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district court of the county of the defendant's principal place of business, may sue for and recover treble the damages sustained. In addition, any person who is threatened with injury or additional injury by reason of any person's violation of such acts may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief. Any suit for injunctive relief against a municipality shall be subject to the provisions of K.S.A. 12-205, and amendments thereto.

(c) In any action commenced under this section, the plaintiff may be allowed reasonable attorney fees and costs. Except as provided further, the remedies provided herein shall be alternative and in addition to any other remedies now provided by law. In no case shall any person be awarded treble damages pursuant to this section as part of or in addition to an award of full consideration damages pursuant to K.S.A. 50-115, and amendments thereto.

Sec. 3. K.S.A. 50-115 and 50-161 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.